
DEPARTMENT OF VETERANS AFFAIRS

Veterans Benefits Administration (VBA)



***Nehmer* Training Guide**

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Revised

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PURPOSE AND OBJECTIVES

The purpose of this training guide is to provide users with the information necessary to review, develop, rate, and authorize *Nehmer* claims for the three new presumptive conditions – hairy cell leukemia and other chronic B-cell leukemias (HCL), Parkinson's disease (PD), ischemic heart disease (IHD), and any other presumptive conditions involving **in-country** Vietnam service.

This guide will enable you to:

1. Review the claims folder and readjudicate all claims that previously denied a class member's claim for service connection for a new presumptive disease
2. Identify the eligibility requirements that qualify a Veteran or survivor for retroactive awards of benefits under *Nehmer*
3. Identify what constitutes a prior claim of benefits for conditions presumptively related to herbicide exposure under *Nehmer*
4. Identify the three new and current presumptive conditions associated with herbicide exposure
5. Identify and correctly apply effective date rules for a *Nehmer* claim
6. Determine what type of development, if any, is needed for rating or authorization
7. Determine requirements for authorization of awards pursuant to *Nehmer*
8. Identify the requirements of the decision notice letter.

BACKGROUND

The *Nehmer* court case originated in 1986 as a class-action lawsuit against the Department of Veterans Affairs (VA) by Vietnam Veterans and their survivors, who alleged that VA had improperly denied their claims for service-connected compensation for disabilities allegedly caused by exposure to the herbicide Agent Orange in service. In 1989, the United States District Court for the Northern District of California (Court) ruled that VA's regulation was invalid because the causation standard that it used was inconsistent with the intent of Congress. The Court invalidated VA's regulation and voided all benefit denials made under that regulation.

In May 1991, the *Nehmer* parties entered into a "Final Stipulation and Order" (Final Stipulation) outlining the actions to be taken in response to the Court's decision. Among other things, the Final Stipulation provided: (1) that VA would issue new regulations in accordance with the Agent Orange Act of 1991; (2) that, after issuing such regulations, VA would readjudicate the claims where a prior denial was voided by the Court's 1989 order and would initially adjudicate all similar claims filed subsequent to the Court's order; and (3) that, if benefits were awarded upon such readjudication or adjudication, the effective date of the award

would be the later of the date the claim was filed or the date the disability arose. Ordinarily, if a claim is granted on the basis of a new regulation, the law states that the effective date of the award may not be any earlier than the date on which the regulation went into effect.

In a February 1999 decision, the Court clarified the scope of its 1989 decision. It voided all VA decisions that were issued while the invalid regulation was in effect and which denied service connection for a Vietnam Veteran's disease that was later found to be associated with herbicide exposure under new regulations. In December 2000, the Court provided further clarification when it concluded that VA must pay the full retroactive benefit to the estates of deceased class members.

On October 13, 2009, the VA announced Secretary Shinseki's decision to establish presumptive service connection for three additional illnesses associated with exposure to herbicides used in Vietnam based on an independent study conducted by the Institute of Medicine. The illnesses affected by the recent decision are B-cell leukemias (such as hairy cell leukemia), Parkinson's disease, and ischemic heart disease. A proposed rule adding these three conditions to VA's list of presumptive diseases was published in the Federal Register on March 25, 2010, 75 Fed. Reg. 14,391.

As of September 20, 2010, approximately 145,000 Vietnam Veterans and survivors were previously denied service-connection or filed new claims (number may include duplicates that will be removed from final total). All of these claims must be adjudicated/readjudicated in order to comply with the Final *Nehmer* Stipulation.

REFERENCES

The following references are useful in the review and adjudication of *Nehmer* claims:

- 38 U.S.C. § 503 – Administrative Error; Equitable Relief
- 38 U.S.C. § 5101 – Claims and Forms
- 38 U.S.C. § 5103 – Notice to Claimants of Required Information and Evidence
- 38 U.S.C. § 5110 – Effective Dates of Awards
- 38 U.S.C. § 5125 – Acceptance of Reports of Private Physician Examinations
- 38 C.F.R. § 3.114 – Change of Law or Department of Veterans Affairs Issue
- 38 C.F.R. § 3.150 – Forms to be Furnished
- 38 C.F.R. § 3.151 – Claims for Disability Benefits
- 38 C.F.R. § 3.155 – Informal Claims

- 38 C.F.R. § 3.303 – Principles Relating to Service Connection
- 38 C.F.R. § 3.304 – Direct Service Connection; Wartime and Peacetime
- 38 C.F.R. § 3.307 – Presumptive Service Connection for Chronic, Tropical or Prisoner-of-War Related Disease, or Disease Associated with Exposure to Certain Herbicide Agents; Wartime and Service on or after January 1, 1947
- 38 C.F.R. § 3.309(e) – Diseases Subject to Presumptive Service Connection
- 38 C.F.R. § 3.312 – Cause of Death
- 38 C.F.R. § 3.350 Special Monthly Compensation Ratings
- 38 C.F.R. § 3.400 – General Effective Dates
- 38 C.F.R. § 3.816 – Awards under the *Nehmer* Court Orders for Disability or Death Caused by a Condition Presumptively Associated with Herbicide Exposure
- 38 C.F.R. § 3.951 – Preservation of Disability Ratings
- 38 C.F.R. § 4.100 – The Cardiovascular System Prior to January 12, 1998
- M21-1MR III.ii.2.C.14.b – Applications for Death Benefits
- M21-1MR III.iii.5 – Relationship and Dependency
- M21-1MR III.iii.5.C.14.a – Recognition of Common Law Marriages by State
- M21-1MR, IV.iii.3.F.23 – General Information on the Effect of a Surviving Spouse's Remarriage
- M21-1MR IV.ii.1.H.28 – Developing Claims Based on Herbicide Exposure in the Republic of Vietnam (RVN)
- M21-1MR IV.ii.2.C.10 – Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN)
- M21-1 Part I, Appendix C – BDN Tables and Codes
- Fast Letter 10-XXXX – XXXXXXXXXXXXX (to be released at a later date)

***NEHMER* VS. TRADITIONAL CLAIMS PROCESSING**

Comparison Chart

The comparison chart notes differences between the *Nehmer* claims workflow process and traditional claims processing.

Nehmer vs. Traditional Claims Comparison		
	Traditional Claims	Nehmer
Definition	All other claimants and all periods of service for benefits.	<i>Nehmer</i> class members are Vietnam Veterans who served in-country and have a covered herbicide disease, or the surviving spouse, child, or parent of a Vietnam Veteran who died from a covered herbicide disease.
Effective Dates	The date the claim resulting in award was filed or date entitlement arose, whichever is later, but in no event prior to the effective date or the regulatory presumption of service connection.	<p>The date the original claim was filed or arose, whichever is later, even if it was before the effective date of applicable regulatory presumption, and without regard to finality of prior denial(s) (Contrary to 38 U.S.C. § 5110(g), 38 C.F.R. § 3.400).</p> <p>Effective dates can go back as far as the date of claim that was pending on September 25, 1985 (The date the rules implementing "Veterans' Dioxin and Radiation Exposure Compensation Standards Act," Pub. L. 98-542 (Oct. 24, 1984) were effective in the Code of Federal Regulations).</p>
Need to File Claim	The claimant must file original claim. If claimant alleges earlier effective date, claimant must demonstrate that he or she made an earlier claim that did not become final.	<p>The claimant need not file a new claim or a claim for earlier effective date when new presumptive condition is added. VA must search its records to find eligible claimants and award benefits, without action on the claimant's part.</p> <p>Medical records noting the existence of a condition later made presumptively service-connected can in some instances, result in an award without a formal claim ever being filed</p>

<i>Nehmer</i> vs. Traditional Claims Comparison		
	Traditional Claims	<i>Nehmer</i>
Eligible Payees	<p>Veteran or surviving spouse, children or dependent parents of the Veteran can get accrued or owed benefits.</p> <p>Benefits never go to the estate because the right to benefits ends with death of the entitled individual.</p> <p>The one who bore the last expenses can claim reimbursement from benefits owed.</p>	<p>Veterans, surviving spouse, children, parents; or to the surviving spouse, children, parents, or estate of class members.</p> <p>The right to benefits survives entitled member. (Contrary to 38 U.S.C. § 5121). Concepts relating to accrued benefits are not applicable in <i>Nehmer</i> cases</p>
Payee Identification	Payee information is generally in the Veteran's claims folder.	Payee may not be identified in Veteran's claims folder because the claim survives the Veteran and his spouse; requires further documentation for proof of entitlement (e.g., marriage certificate, birth certificate). VA must request those documents needed to establish eligibility.
Unable to Identify Payee	N/A	VA must notify class counsel if unable to identify payee. Class counsel utilizes a search firm that locates potential payees and class counsel provides the VA with information to contact those persons and establish eligibility. (See Payee Identification).
Payment of Compensation/ Priority of Adjudication	<p>Payment is made when the benefit is granted in agency's course of business.</p> <p>Priorities are decided nationally and locally based on Department's policies.</p>	<p>The timing of payments is governed by court order. Payment is required to be received within twenty-one days of receipt of information confirming entitlement (the twenty-one day period begins once the whereabouts of a class member is known).</p> <p><i>Nehmer</i> claims must be handled as a first priority, under court-ordered deadlines.</p>
Notice of Calculation of Compensation	The VA provides notice of amounts payable under 38 U.S.C. § 1114.	The VA notice letter must include an explanation of how the amount was calculated.

<i>Nehmer</i> vs. Traditional Claims Comparison		
	Traditional Claims	<i>Nehmer</i>
Proof of Payment	N/A	A copy of Treasury Inquiry screens indicating proof of payment may be provided to class counsel upon request.
Time Limit	If the applicant fails to provide requested information within one year, a decision is made on the available evidence. This decision is considered final.	There is no time limit imposed for submission of evidence by a claimant.
Retired Pay / SBP Offset Issues	Retired pay/SBP offset is determined by computer at DFAS in the normal course of business.	Because benefits may be owed from over 20 years ago, offset amount must be retrieved from DFAS database.
Court Supervision	The VA is subject to normal oversight by OIG and Congress.	Deadlines are court imposed, and class counsel oversees VA compliance. When the timeline is not met, VA must provide a declaration signed under oath by the persons with knowledge setting forth the steps taken to meet the deadline, an explanation of the delay, and the date by which VA will provide payment/notice.
EAJA Fees	EAJA fees may be awarded in certain appeals of denied claims.	VA compensates class counsel for all its work on <i>Nehmer</i> claims.
Processing	Processing occurs within normal VA channels.	Virtually all <i>Nehmer</i> claims require special handling.

***Nehmer* vs. 38 C.F.R. § 3.114(a)**

By definition, if a case falls under *Nehmer*, it means that the first claim of service connection for the condition at issue was received BEFORE the condition was added to the list of Agent Orange-related disabilities and the effective date for the grant of service connection will also be BEFORE the condition was added to the list of Agent Orange-related disabilities. As a result, if a claim was received before the condition was added to 38 C.F.R. § 3.309(e), the case is a potential *Nehmer* case. On the other hand if the claim was received after the disease was added to the presumptive list, it is not a *Nehmer* case. In those cases 38 C.F.R. § 3.114(a) applies and the earliest effective date that can be granted under 38 C.F.R. § 3.114(a) is the date on which the liberalizing legislation was effective (i.e. the date on which the condition was added to 38 C.F.R. § 3.309(e) or one-year prior to date of claim, whichever is later).

Remember that in all cases, the condition must have been present on the date we grant service connection. Occasionally, we receive a claim BEFORE the

condition is actually present, and neither *Nehmer* nor 38 C.F.R. § 3.114(a) allows for a grant of service connection prior to a confirmed diagnosis.

The *Nehmer* claims workflow process differs from the traditional claims processing that the reviewer normally sees. Appendix 5 shows an overview of the “Workflow for Processing *Nehmer* Claims.”

NEW PRESUMPTIVE CONDITIONS

The three new presumptive conditions are:

1. Ischemic heart disease
2. Chronic B-cell leukemias, such as hairy cell leukemia
3. Parkinson’s disease

Definition of Ischemic Heart Disease

According to Harrison’s Principles of Internal Medicine (Harrison’s Online, Chapter 237, Ischemic Heart Disease, 2008), ischemic heart disease is a condition in which there is an inadequate supply of blood and oxygen to a portion of the myocardium; it typically occurs when there is an imbalance between myocardial oxygen supply and demand. Therefore, for purposes of this regulation, the term “ischemic heart disease” includes, but is not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable, and Prinzmetal’s angina. Since the term refers only to heart disease, it does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke.

Please see the Ischemic Heart Disease PowerPoint for further information, which is linked to the Training Letter at [Rating IHD](#).

The cardiovascular section of the rating schedule was revised effective January 12, 1998 (See the Rating section for further information).

Definition of Chronic B-Cell Leukemia

B-cell leukemia describes several different types of lymphoid leukemias and includes the following types:

- B-cell chronic lymphocytic leukemia/small lymphocytic lymphoma
- Acute lymphoblastic leukemia, mature B-cell type
- B-cell prolymphocytic leukemia
- Precursor B lymphoblastic leukemia
- Hairy cell leukemia

There are fourteen kinds of lymphomas involving B-cells.

- Diffuse large B-cell lymphoma
- Follicular lymphoma
- Mucosa-associated lymphatic tissue lymphoma (MALT)
- Small cell lymphocytic lymphoma (overlaps with the chronic lymphocytic leukemia)
- Mantle cell lymphoma (MCL)
- Burkitt lymphoma
- Mediastinal large B-cell lymphoma
- Waldenström macroglobulinemia
- Nodal marginal zone B-cell lymphoma (NMZL)
- Splenic marginal zone lymphoma (SMZL)
- Extranodal marginal zone B-cell lymphoma
- Intravascular large B-cell lymphoma
- Primary effusion lymphoma
- Lymphomatoid granulomatosis

Definition of Parkinson's Disease

Parkinson's disease (PD) belongs to a group of conditions called motor system disorders, which are the result of the loss of dopamine-producing brain cells. The four primary symptoms of PD are tremor, or trembling in hands, arms, legs, jaw, and face; rigidity, or stiffness of the limbs and trunk; bradykinesia, or slowness of movement; and postural instability, or impaired balance and coordination. As these symptoms become more pronounced, patients may have difficulty walking, talking, or completing other simple tasks. PD usually affects people over the age of 50. Early symptoms of PD are subtle and occur gradually. In some people the disease progresses more quickly than in others. As the disease progresses, the shaking, or tremor, which affects the majority of PD patients may begin to interfere with daily activities. Other symptoms may include depression and other emotional changes; difficulty in swallowing, chewing, and speaking; urinary problems or constipation; skin problems; and sleep disruptions. There are currently no blood or laboratory tests that have been proven to help in diagnosing sporadic PD. Therefore the diagnosis is based on medical history and a neurological examination. The disease can be difficult to diagnose accurately. Doctors may sometimes request brain scans or laboratory tests in order to rule out other diseases.

NOTE: See Appendix 1 for the complete list of presumptive conditions associated with herbicide exposure.

ADJUDICATION/READJUDICATION REQUIREMENTS UNDER THE *NEHMER* COURT ORDER

The *Nehmer* Court has held that the stipulation requires VA to readjudicate all cases in which VA previously denied a class member's claim of service connection for a new presumptive disease. A prior denial based on lack of diagnosis rather than lack of nexus falls within the scope of the stipulation's requirement for readjudication. This differs from claims in which there was no prior claim or class member status (*i.e.*, no in-country Vietnam service, no "Veteran" status, etc).

CLASS MEMBERS UNDER THE *NEHMER* COURT ORDER

38 C.F.R. § 3.816 (b)(1) defines the class members as: (i) a Vietnam Veteran who has a covered herbicide disease; or (ii) a surviving spouse, child, or parent of a deceased Vietnam Veteran who died from a covered herbicide disease.

38 C.F.R. § 3.816 (f)(1) states that if a *Nehmer* class member entitled to retroactive benefits . . . dies prior to receiving payment of any such benefits, VA shall pay such unpaid retroactive benefits to the first individual or entity listed below that is in existence at the time of payment:

- (i) The class member's spouse, regardless of current marital status
 - A spouse is the person who was legally married to the class member at the time of the class member's death
- (ii) The class member's child(ren), regardless of age or marital status
 - If more than one child exists, payment of the retroactive benefits owed shall be divided into equal shares, and accompanied by an explanation of the division; this includes all children, regardless of age or marital status
- (iii) The class member's parent(s), regardless of dependency
 - If both parents are alive, half the retroactive benefits owed shall be paid to each parent, and accompanied by an explanation of the division
- (iii) The class member's estate

ELIGIBILITY REQUIREMENTS FOR RETROACTIVE PAYMENT PURPOSES

If a *Nehmer* class member is entitled to disability compensation for a covered herbicide disease, eligibility requirements must be met. The eligibility requirements are:

- The Veteran served in the Republic of Vietnam; **and**

- They have applied, were denied, or a claim was inferred (by class member or VA) for benefits for one of the three new presumptive conditions between September 25, 1985, or a date prior to September 25, 1985, if the claim was pending or on appeal on September 25, 1985, and August 31, 2010, the date VA published the final regulation; **and**
- They are diagnosed with one of the presumptive diseases, or a disease that reasonably may be construed as a covered herbicide disease.

EFFECTIVE DATES FOR RATING PURPOSES

The effective date for retroactive claims must be one of the following dates:

- The later of the following:
 - The date VA received the claim, or a date prior to September 25, 1985, if the claim was pending or on appeal on September 25, 1985, or
 - The date the disability arose
- The day following the date of the class member's separation from active service, if filed within one year from the date of separation

The effective date for Dependency and Indemnity Compensation (DIC) claims must be one of the following dates:

- The date VA received the claim, or
- The first day of the month of the Veteran's death, if filed within one year from the date of the Veteran's death

NOTE: If the class member's claim for DIC for the death was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered herbicide disease that caused death, the effective date of the award will be the later of the date such claim was received by VA or the death occurred (38 C.F.R. § 3.816(d)(2)).

NOTE: 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.114(a) **do not apply** to *Nehmer* claims.

SERVICE IN THE REPUBLIC OF VIETNAM

Veterans can establish proof of service in the Republic of Vietnam (RVN) if they were:

- On land in the RVN, **or**
- Aboard vessels operating on the inland waterways of RVN, **or**

- Aboard vessels docked at the ports of RVN and they provide a statement of personally going ashore, **or***
- Aboard vessels on the offshore waters of RVN, **if** the conditions of service involved duty, **or** visitation on the ground in RVN, **or**
- Other locations, **if** the conditions of service involved duty or visitation on the ground in RVN

* For a list of vessels confirmed to have docked on the RVN shore or traveled on inland waterways, see Appendix 2.

There is no requirement for a specified length of service, duty, or visitation in RVN. See 38 C.F.R. § 3.307(a)(6)(iii) for more information.

The following sources may be used to verify service in RVN If they served in RVN during the period beginning January 9, 1962, and ending on May 7, 1975:

- DD Form 214, *Certificate of Release or Discharge From Active Duty*
- DA Form 20, *Enlisted Qualification Record*
- VA Form 21-3101, *Request for Information*
- Service Treatment Records (STR)
 - Dental records found in STRs
- Military Personnel Records
- Army Post Office (APO) Numbers (See Appendix 4)
- Temporary Duty (TDY) Orders
- Shore leave granted in writing
- Other documented evidence that shows the Veteran physically set foot in RVN
- Defense Personnel Records Information Retrieval System (DPRIS) verifying in-country service
- Development to the Veteran (See Development section for details)

See Appendix 4 for a list of Vietnam Era Asian Pacific Theater APO numbers provided by the Military Postal Service Agency that include APO numbers used for mail delivery to RVN.

CLAIMS FOR BENEFITS

Veterans must have applied for or have been denied benefits for one of the three new presumptive conditions between September 25, 1985, (or a date prior to September 25, 1985, if the claim was pending or on appeal on September 25, 1985) and August 31, 2010, the date VA published the final regulation.

A claim meeting the eligibility requirements of *Nehmer* can be any of the following:

- A claim for Service Connection (SC)
- An informal claim
- A pension claim
- An inferred claim for SC
- A claim inferred by Veteran or VA during review
- Notice of Death
- A claim for burial benefits
- A claim for DIC, death pension or accrued benefits
- Social Security Administration - VA Form 21-4182, *Application for Dependency and Indemnity Compensation or Death Pension*
- VA Form 21-601, *Application for Accrued Amounts Due A Deceased Beneficiary*

It is **not** the case that medical records alone constitute a claim for *Nehmer* purposes. However, it is a rule that if, at the time of a prior decision on any compensation claim, VA had medical evidence containing a diagnosis of a now-covered condition (e.g., IHD), then the condition is considered to have been part of the previously denied claim. It may help to think about it this way: If a presumption of service connection for IHD existed at the time of a prior RO decision on a different disability, would VA have inferred and granted SC for IHD because it then had evidence of the disease? If so, then we assume, for *Nehmer* purposes, that the prior claim included a claim for IHD, even if it was not expressly claimed at the time. This is what equates to medical records confirming a diagnosis of a presumptive disease qualifying as a claim for *Nehmer* purposes. VA rarely receives medical records unassociated with any claim, or wherein a rating decision has not subsequently been issued at some point in the record.

This rule results from footnote 1 of the *Nehmer* stipulation (See Appendix 18). The footnote says, in effect, that prior VA decisions are deemed to have denied SC for any condition that paragraph 46.02 of the M21-1 (in 1991) required to be coded in the rating decision. At that time, the M21-1 said that the rating decision should identify and “code” each diagnosis shown by medical records even if not claimed. For example, if the RO in 1990 denied a claim for service connection for arthritis and the Veteran’s medical records showed a diagnosis of IHD, the Manual required VA to list IHD in the rating decision. Under *Nehmer*, the RO decision is treated as having denied a claim for IHD if IHD was coded in the rating decision or it should have been coded in the rating decision.

This provision resulted in confusion as to whether medical records alone constitute a claim. They do not constitute a claim **by themselves**, but if we have such medical records at the time we receive a separate SC claim, then the condition shown by the medical records is **part of that claim**. Accordingly, for effective-date purposes, they should be considered part of whatever claim was

the subject of the rating decision. Here are a couple of examples of how this should work:

Example 1:

The Veteran filed a claim for service connection for a psychiatric condition in 1990. In developing the claim, VA receives medical records showing a diagnosis of IHD. VA denies the claim in 1991. Under footnote 1, IHD is deemed part of the 1990 claim, and the effective date may be the later of the date of that claim or date disability arose. This instruction applies if the IHD records were incorporated into the record after the psychiatric was originally adjudicated; if for example, the claimant appealed that issue and submitted the IHD records in the course of the appeal.

Example 2:

The Veteran filed a claim for service connection for a psychiatric condition in 1990. VA denied the claim in 1991, having received no record of an IHD diagnosis. In 1995, VA receives additional medical records, which include a diagnosis of IHD, but receives no new or reopened claim at the time. In 2000, the Veteran filed a claim for service connection for arthritis, which VA denied in 2001. Footnote 1 does **not** apply to the 1990 claim (because there was no evidence that required IHD to be coded in the 1991 decision) and does **not** apply to the receipt of records in 1995 (because there was no claim or decision as to which coding was required), but it **does** apply to the 2000 claim (b/c there was a diagnosis and a claim/decision in which coding was required). The effective date may be the later of the date of the 2000 claim or the date disability arose.

A good way to explain the rule is as follows: If VA received medical records documenting a diagnosis of the now-covered disease, then the first rating decision issued after receipt of those records is deemed to have denied SC for that condition, and the claim denied by that decision is deemed to have included a claim for the now-covered disease.

Additional factors:

- A claim need not reference herbicide exposure (See Example 1)
 - In its February 11, 1999, *Nehmer* order, the Court held that a *Nehmer* class member's compensation claim need only have requested service connection for the presumptive condition in order to qualify as a *Nehmer* claim. It is not necessary that the class member assert the condition was caused by herbicide exposure
- An initial claim may lack specific details, which were clarified by later submissions (See Example 2)
- A prior claim must have involved one or more of the three new presumptive conditions, or one that reasonably may be construed as the

- same covered herbicide disease for which compensation has been awarded (See Examples 3 and 4)
- Live pension claims must be treated as SC claims (See Example 5)
 - Under 38 C.F.R. § 3.15 (a), “a claim by a Veteran for pension may be considered to be a claim for compensation.” VA is not required by law to treat a Veteran’s claim for pension as a claim for compensation, see *Stewart v. Brown*, 10 Vet. App. 15, 18 (1997), but may do so in appropriate circumstances. *Nehmer* is an appropriate circumstance
 - Death pension claims must be treated as DIC claims (See Example 6)
 - A claim of SC burial benefits must be treated as an informal DIC claim in certain circumstances. For more information, see the Rating section, subsection Claims for Service-Connected Death and for scenarios see Examples 7, 8 and 9 below.
 - An open claim:
 - An instance where VA failed to provide a decision notice letter to the claimant
 - An instance where VA failed to address a claim, such as an inferred or an informal claim (or failed to address an appeal)
 - An instance where VA failed to provide an application for benefits to a claimant

Examples of Claims

Example 1:

A Veteran who served in the Republic of Vietnam filed a claim in 1994, alleging that his IHD, PD, or HCL began while on active duty *following his service in Vietnam*. VA denied the claim in 1995. The Veteran reopens the claim in 2010, and service connection is granted based on VA’s amended herbicide regulations. On these facts, the effective date must relate back to the 1994 claim, even though the Veteran alleged a different basis for service connection.

Example 2:

In January 1987, a Veteran claimed compensation for lymphoma. In developing that claim, VA obtained medical records indicating that the Veteran was diagnosed with HCL in February 1987. Based on these facts, it would be reasonable to treat the January 1987 claim as a claim for service connection for HCL. Under *Nehmer*, benefits may be paid retroactive to the date of that claim or the date the disability arose, whichever is later, as determined by the facts of the case.

Example 3:

In April 1995, a Veteran claimed compensation for anemia/leukemia. Medical records obtained by VA indicated the Veteran did not have leukemia. The claim was denied in 1995. The Veteran did not file an appeal based on the 1995 decision. In 1999 VA received medical records showing that the Veteran had been diagnosed with leukemia in January 1996. VA did not treat the medical evidence as a claim and took no action based on the submission. The Veteran did not submit anything additional until 2001. In 2001 the Veteran filed a reopened claim seeking compensation for HCL. Included in his reopened claim was the evidence received by VA in 1999 along with other medical evidence documenting a current diagnosis of leukemia. Under the terms of the 38 C.F.R. § 3.816(c)(2), the effective date of an award under *Nehmer* is the later of the date of the claim or the date the disability arose. Based on these facts the effective date would be January 1996, as that is when the diagnosed disability arose. That date is later than the date of the claim, April 1995. Do not confuse this example with the instructions under “Claims for Benefits” regarding medical records alone serving or not serving as a claim. In this example, it is the April 1995 claim that must be readjudicated in full and the confirmed diagnosis in January 1996 that serves as the effective date.

Example 4:

Veteran filed a formal claim for service connection for IHD, PD, or HCL in November 1979 and VA denied the claim in January 1980. In May 1986, the Veteran submitted a letter stating, “please consider service connection for IHD, PD, or HCL,” along with documentation showing a diagnosis for one of these conditions. On these facts, the May 1986 letter is an acceptable formal claim to reopen, and benefits must be paid retroactive to May 1986 under *Nehmer*.

Example 5:

In 1994, a Veteran filed a claim for nonservice-connected (NSC) pension. After VA denied the claim, the Veteran filed a statement in 1995 stating, “I disagree with your decision denying pension.” I also should be paid compensation for IHD, PD, or HCL.” VA did not forward the claimant an application form and did not adjudicate any claim for service connection for IHD, PD, or HCL. On these facts, both the 1994 pension claim and the 1995 statement must be accepted as a claim for IHD, PD, or HCL.

Example 6:

A Veteran died of IHD, PD, or HCL. In 1988, the surviving spouse filed a VA Form 21-534, *Application for DIC or Death Pension or Accrued Benefits by a Surviving Spouse or Child*, and marked “no” in response to the question “are you claiming that the cause of death was due to service?” Accordingly, VA

adjudicated a claim for pension only. In 2009, the surviving spouse applies for DIC, which is granted. Under these circumstances, the award must be made retroactive to the 1988 application, because it must be treated as a DIC claim.

DIC claimants generally are not required to identify specific diseases in their applications. The absence of specific reference to IHD, PD, or HCL in a prior DIC application will not preclude assignment of a retroactive effective date under *Nehmer*, provided the evidence establishes that IHD, PD, or HCL caused or contributed to the Veteran's death.

Example 7:

In 1995, a surviving spouse filed an application for burial benefits (VA Form 21-530, *Application for Burial Benefits*) and marked "yes" in response to the question "are you claiming that the cause of death was due to service?" VA forwarded the claimant an application for DIC (VA Form 21-534). The claimant returned the completed DIC application within one year. Based on these facts, the date of the 1995 application for burial benefits may be accepted as the date of the DIC claim for purposes of *Nehmer*.

Example 8:

In 1995, a surviving spouse filed an application for burial benefits (VA Form 21-530) and marked "yes" in response to the question "are you claiming that the cause of death was due to service?" VA forwarded the claimant an application for DIC (VA Form 21-534), but the claimant failed to return the completed DIC application. Based on these facts, the 1995 application for burial benefits should not be considered a claim for DIC.

Example 9:

In 1995, a surviving spouse filed an application for burial benefits (VA Form 21-530) and marked "yes" in response to the question "are you claiming that the cause of death was due to service?" VA did not forward an application for DIC. Based on these facts, DIC must be paid retroactive to the 1995 application for burial benefits, if otherwise in order. The one-year period for filing a completed DIC application did not begin due to VA's failure to provide the application form.

DIAGNOSIS OF PRESUMPTIVE DISABILITIES

The evidence must show a diagnosis of one of the presumptive conditions and the date of the diagnosis. A prior denial of a claim for a presumptive disability based on lack of a diagnosis falls within the scope for readjudication, however the effective date for any disability cannot precede the diagnosis.

Example 1:

The Veteran submitted a claim for service connection for ischemic heart disease due to herbicide exposure on May 2, 1995. He served in Vietnam; therefore, herbicide exposure is conceded. Testing confirmed hypertensive vascular disease on April 5, 1995, but not ischemic heart disease, so a decision letter was sent to the Veteran denying service connection for ischemic heart disease. On March 3, 2010, VA administratively reviewed the claims file due to ongoing *Nehmer* litigation. The evidence on file showed VAMC treatment records with a diagnosis of ischemic heart disease on April 19, 1997. The medical records did not have a date stamp or any other annotation showing when VA received them. The medical records were accepted as a reopened claim and resulted in a denial of service connection by rating dated May 15, 1998. Based on these facts, the Veteran was granted service connection from April 19, 1997. Although, the Veteran filed a claim on May 2, 1995, a diagnosis was not shown until April 19, 1997. In addition, 38 C.F.R. § 3.816(c)(1) states that the effective date of the award will be the later of the date VA received the claim on which the prior denial was based or the date the disability arose.

Example 2:

A review of the claims folder shows that an original claim was filed on April 5, 1995, for service connection for *heart disease* (not IHD) and high cholesterol. The medical evidence for the period March 1993 and April 1995 showed a diagnosis of high cholesterol and a *history* of heart disease. Development action(s) was not undertaken and the SC claim was denied in June 1996. Based on these facts, VA failed to confirm a diagnosis and the *Nehmer* stipulation requires that we readjudicate claims for new presumptive conditions that were previously denied.

Example 3:

A review of the claims folder shows that an original claim was filed on June 5, 1996, for service connection for IHD and high cholesterol. The Veteran served in-country Vietnam from 1969 to 1971. The medical evidence of record for the period March 1993 and April 1996 showed a diagnosis of high cholesterol and a history of heart disease. A VA examination dated September 7, 1996, showed a diagnosis of high cholesterol and IHD. Based on these facts, the claim was denied SC June 1997. The *Nehmer* stipulation requires that we readjudicate claims for new presumptive conditions that were previously denied.

NEHMER DATABASES

The Phase I *Nehmer* Adjudication (EP 687) and the Phase II *Nehmer* Rejudication (EP 681) Databases facilitate the claims folder review by providing

the user with questions that are necessary to process a *Nehmer* claim. The information gathered not only enables the claims folder review process, but also provides a data collection mechanism that is used for reporting data to VBA, the Secretary of Veterans Affairs, the Office of General Counsel (OGC), the Department of Justice, and, if necessary, the Court.

It is imperative that the databases are utilized and all information is saved in the appropriate database during the claims folder review. In previous *Nehmer* readjudications, inaccurate reporting and failure to adequately track and document work resulted in the Court issuing “Show Cause” orders regarding why VA and VBA supervisors should not be held in contempt.

Upon completion of the adjudication/readjudication of the file in the database, the reviewer will be responsible for incorporating a printout of the completed worksheet into the claims folder.

END PRODUCT CONTROL

For the purposes of tracking, separate EPs have been assigned to the *Nehmer* claims: EP 687 for readjudication of previously denied claims and EP 681 for new claims received between the Secretary’s original announcement and August 31, 2010. The date of claim and end product will be established in the *Nehmer* database. If a *Nehmer* claim is NOT in the database, notify Southern Area Office immediately. Do NOT attempt to establish an EP until notified of the database modification and the correct date of claim. ONLY then proceed to establish the EP and the correct date for date of claim.

The e-mail address for Southern Area Office can be found in Appendix 6.

CLAIMS FOLDER REVIEW

A systematic review of the **entire** claims folder is required to determine if the individual is a *Nehmer* class member and if the eligibility requirements for retroactive payments under *Nehmer* are met.

If the individual is a *Nehmer* class member, the reviewer must ensure the following actions are taken:

- Prepare rating if SC is granted and assign an effective date
- Prepare award action(s)
- Prepare notification letter with appellate rights, and
- Update the database

If the individual is not a *Nehmer* class member, forward to the RVSR for a Memorandum for the Record. For more information regarding Memorandums for the Record, see the Rating section.

Check the claims folder for medical evidence required for a rating decision.

For live cases, check for complete information of spouse (and prior marriages/divorces), children, step-children, adoption. For cases involving death, verify proof of dependency and for proof of death. For burial claims, verify there is an itemized funeral bill showing paid or receipts showing the funeral expenses were paid and who paid the funeral bill.

During the screening process, if medical evidence is sufficient to grant partial benefits, send to the RVSR.

IMPORTANT: Detailed, but concise notes should be added in Modern Awards Processing – Development (MAP-D) throughout the claims review. After completion of review, the data must be entered into the *Nehmer* database to track all actions associated with the claim.

Proceed with development if necessary information is not of record for making a decision and completing the claim.

DEVELOPMENT

Development may be required following the claims folder review. This may include development for medical evidence, service, dependency, payee, military pay, and/or burial information. Use the Initial *Nehmer* Notice Letter found in Appendix 12 and add any development paragraphs that may be necessary.

NOTE: Development for any evidence (including requests for information that are initiated to a claimant or any third party) that was not in the claims file will require a rating decision. **Do not** dispose of the issues by a memorandum for the record.

Some examples of development where VA must generate a rating decision include:

- Viewing or printing CAPRI records
- Searching the internet for ships that may verify in-country RVN Service
- Requesting service information through DPRIS
- Developing to the claimant or private medical facility for evidence

Medical Evidence

Due to the inherent nature of *Nehmer* cases, it may be difficult to obtain a complete medical history of the Veteran. The development of evidence in connection with claims for service connection will be accomplished when deemed necessary, but it should not be undertaken when evidence present is sufficient for this determination (38 C.F.R. § 3.304(c)). When the evidence of record is sufficient to grant benefits, but a current assessment of the medical condition(s) is necessary, VAE may be appropriate. Consult with the RVSR to determine if medical records are sufficient for rating.

Example:

IHD with multiple heart attacks since denial ten years ago, and evidence in file would have warranted a 60 percent evaluation.

Medical evidence, lay evidence, or both may establish the factual basis for a decision. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should describe the material and relevant facts as to the Veteran's disability observed within such period, not merely conclusions based upon opinion. See 38 C.F.R. § 3.307(b).

In order to pay DIC and burial benefits, a death certificate or other proof of death is required showing the date of death and the cause(s) of death. See 38 C.F.R. § 3.211 for additional sources of proof of death.

Service

If unavailable in the Veteran's records, verification of service may be obtained by performing a Defense Personnel Records Information Retrieval System (DPRIS) request.

Verification of the Veteran's pay grade is required if the Veteran died prior to December 31, 1992. Check the Veteran's DD Form 214 for pay grade. If the evidence of record cannot determine the pay grade, request service records from the service department through DPRIS.

For more information on using DPRIS for service verification, please see the respective User Guides.

Dependency

Use the following table to determine what information is required to establish dependency. Please note that this is not an all-inclusive list.

Evidence Requirements for Dependency	
Dependent	Evidence Required
Spouse	<ul style="list-style-type: none"> • Date of marriage to Veteran • Number of prior marriage(s) • Name(s) of prior spouse(s) • Date(s) and place(s) of termination of prior marriage(s) for both the Veteran and spouse • Social Security Number (SSN) • Continuous cohabitation • Remarriage after death of the Veteran
Biological Child	<ul style="list-style-type: none"> • Date of birth • SSN
Stepchild	<ul style="list-style-type: none"> • Date of birth • Birth Certificate • SSN • Date child was in the household of the Veteran
Adopted Child	<ul style="list-style-type: none"> • Date of birth • SSN • Adoption paperwork or revised birth certificate
Parent	<ul style="list-style-type: none"> • Birth certificate of the Veteran • SSN • Parent's financial information

Children between ages 18 and 23 who are attending school at an approved institution may receive DIC benefits. Before the claim can be processed, it may be necessary to gather information regarding school attendance dates and other information. Additionally, information on Dependents' Educational Assistance (DEA) should be checked to prevent concurrent receipt of benefits.

Development of dependency information may be made over the telephone, through facsimile, or by letter.

For more information on developing for dependency see M21-1MR, Part III, Subpart iii, Chapter 5 (M21-1MR III.iii.5).

The right to benefits survives entitled member (contrary to 38 U.S.C. § 5121).

Continuous Cohabitation

The requirement that there must be continuous cohabitation from the date of marriage to the date of death of the Veteran will be considered as having been met when the evidence shows that any separation was due to the misconduct of,

or procured by, the Veteran without the fault of the surviving spouse. Temporary separations, including those caused for the time being through fault of either party, will not break the continuity of the cohabitation.

Common Law Marriage

To view a list of states that recognize common law marriage, please refer to “Recognition of Common Law Marriages by State” in M21-1MR III.iii.5.C.14.a.

Payee

As these are potentially old cases, it may be necessary to develop for payees for the retroactive benefits. Send letters to all dependents of record requesting the names, addresses, and telephone numbers of all known survivors.

Additionally, proof of dependency is required before retroactive benefits may be paid. Develop for birth certificates, marriage certificates, and other proof of dependency if necessary.

If payees cannot be identified, VA must make such reasonable inquiry as the information on file permits. For example, if the claims folder identifies an authorized representative or a relative, it would be reasonable to contact such person to request information concerning the existence of a surviving spouse, child(ren), parent(s), or the executor/administrator of the class member’s estate.

If any such payee cannot be identified or located:

- Complete VA Form 21-0820, *Report of General Information*, for the folder stating the reasons why the payment of retroactive *Nehmer* benefits was not payable to a beneficiary
- Notify *Nehmer* Project Manager by e-mail that no payee could be identified, including the claimant’s name and file number in the message

NOTE: Refer to the Eligibility Requirements section for a list of eligible payees and order of entitlement.

Military Pay

38 U.S.C. § 5305 prohibits, in some cases, Veterans from receiving full military retirement pay and VA compensation benefits at the same time. In order to properly withhold benefits and prevent overpayments, DFAS has provided a database listing retired pay, severance and separation pay, and Survivor Benefit Plan (SBP) amounts and effective dates.

NOTE: Before developing, verify the Veteran waived his or her military pay in lieu of compensation. This can be found on VA Form 21-526, *Veteran’s*

Application for Compensation and/or Pension, or VA Form 21-651, Election of Comp in Lieu of Retired Pay or Waiver of Retired Pay to Secure Comp from VA.

NOTE: A waiver may not be included on some versions of VA Form 21-526. A copy of Form 21-651 must be of record or obtained from the class member.

Burial

The following information may need to be requested from the survivor, funeral home or cemetery:

- Proof of death
- Receipt showing the total cost of the funeral and who made payment
- Itemized list of funeral expenses
- Place of burial

NOTE: Contacting the funeral home or cemetery for this information over the telephone may expedite the process.

IMPORTANT REMINDER: Detailed notes should be entered into MAP-D.

After completion of Development, the *Nehmer* Database should be updated to track all actions associated with the individual's claim.

RATING

Memorandum for the Record

A memorandum for the record is used **only** when the individual is not a *Nehmer* class member (*i.e.*, no prior claim, no “Veteran” status, etc). If it is determined the individual is not a *Nehmer* class member, then a memorandum for the record is required.

A detailed explanation regarding why the individual is not a class member is required. The explanation must be sufficient in detail for the reviewer to undertake a clear analysis as to why the case does not qualify for *Nehmer* readjudication. See Appendix 10 for examples of the no claim and no Vietnam service memorandums for the record.

In addition to completing the memorandum for the record, VA will also send a memorandum notice letter to all individuals whose cases are disposed of by a memorandum for the record. The letter will explain that the individual was identified through an initial VA search process as a potential *Nehmer* class member but that further review of the file did not reveal that the individual had military service within the land borders of Vietnam or its inland waterways, or

he/she did not previously submit a claim for one of the new presumptive conditions. The individual will be given 30 days to respond by submitting information indicating that the individual had the requisite military service to qualify them as a *Nehmer* class member, or that they previously submitted a claim for one of the three new presumptive conditions. In every case where a response is received, VA will formally adjudicate the relevant issue(s) of whether the individual qualifies as a *Nehmer* class member and/or whether the individual had a prior claim that is now subject to readjudication. See Appendix 10 for the memorandum notice letter.

Some examples where VA may not, under any circumstance, dispose of a case using a memorandum for the record include:

1. A Veteran filed a claim expressly for one of the new presumptive diseases
2. A Veteran filed a claim for a disease that may be reasonably construed as a covered herbicide disease
3. A Veteran filed a claim that did not directly address a covered herbicide disease but that did raise an issue potentially intertwined with a covered disease, such as hypertensive heart disease, but VA failed to fully develop that claim in order to rule out or confirm the diagnosis of hypertensive heart disease, or any other potential covered disease
4. Any case where VA reviews a claims folder and discovers evidence *in the file* of a covered herbicide-related disease

NOTE: Verified in-country Vietnam service is conceded in the foregoing examples.

Examples of Memorandums for the Record:

Example 1:

In 1993, the individual filed a claim for service connection for HCL. The medical evidence did not show a diagnosis of HCL. The individual served from 1969 to 1974 (one consecutive period of service) and received a bad conduct discharge. The claim was denied in 1994 based on no diagnosis. Based on these facts, the individual is not a *Nehmer* class member, as he did not have “Veteran” status. A memorandum for the record is in order.

Example 2:

In 1987, the Veteran filed a claim for service connection for lupus. The medical evidence of record shows a diagnosis of lupus. The individual served from 1969 to 1978. The claim was denied in 1989. The rating disposed of the SC claim for lupus, and the incorrect rating disability code (8004-currently used for PD) was used. The notification letter and rating decision only addressed lupus and did not reference PD. Based on these facts, the individual is not a *Nehmer* class

member, as he did not have a prior claim for service connection for a new presumptive disease. A no prior claim memorandum for the record is in order.

Example 3:

In 1995, the Veteran filed a claim for heart disease. The medical evidence submitted with the claim confirmed the diagnosis. The evidence shows the Veteran served in the Air Force from 1965 to 1975 and has verified in-country Vietnam service from 1970-1972. A VA examination was not ordered and no additional development for any medical records was undertaken. The claim for service connection was denied in 1997. The review raised doubt as to whether or not the heart disease could be considered a claim for the new presumptive disease. Based on these facts, it is reasonable to construe the 1995 claim as a claim for the new presumptive disease and a readjudication of the claim is required.

Example 4:

The Veteran filed a claim for hypertension and the medical evidence of record indicated treatment for a heart condition with medication. The claim was denied for hypertension only. In this situation, there is an indication that the Veteran had a heart condition. Based on these facts, the Veteran would be considered a *Nehmer* class member and readjudication of the claim is required.

A slightly different variation to the above scenario would change the outcome. The Veteran claimed hypertension, and the evidence showed a diagnosis of hypertension. Service connection for hypertension was denied. Based on these facts, we do not have a claim for a new presumptive disease. In this situation, a no prior claim memorandum for the record is in order.

WARNING

If there is any doubt about whether or not an individual is a *Nehmer* class member, readjudicate the claim. Do not prepare a Memorandum for the Record.

NOTE: It is anticipated that Memorandums for the Record will not be frequently used and the least likely used will be “no prior claim,” because of the liberal interpretation of a claim.

Confirmed and Continued Rating

If classified as a *Nehmer* class member and eligibility requirements for *Nehmer* claims are met, but there is no change to the decision in the previous claim, you should issue a confirmed and continued rating.

If a prior claim for compensation or DIC for disability or death due to IHD, PD, or HCL was denied for some reason other than a lack of service connection, and there is no basis for awarding an earlier effective date under *Nehmer*, contact C&P Service. Please refer to Appendix 6 for contact information.

Examples:

- If the prior claim was denied because there was no evidence that the Veteran had IHD, PD, or HCL, and VA confirms no diagnosis during readjudication, retroactive benefits would not be in order. VA would issue a rating decision denying benefits under *Nehmer*
- If the prior claim was abandoned or withdrawn, there would not be a basis for retroactive payments under *Nehmer*

Coded Ratings

If classified as a *Nehmer* class member and eligibility requirements for *Nehmer* claims are met, and the claim is ready-to-rate, the following sections pertain to rating claims for service connection, service-connected death benefits, and claims involving service connection combined with service-connected death benefits.

Total Disability Based on Individual Unemployability (TDIU)

The RVSR is strongly encouraged to consider entitlement to TDIU when pension was previously awarded.

- Ensure that when considering TDIU, the presumptive condition is the primary reason for the Veteran being unemployable.

Example:

The Veteran was granted entitlement to pension at 60 percent for IHD under disability code 7005. Under *Nehmer* review, VA determined that the Veteran is service-connected for IHD. Because IHD is the primary condition causing the Veteran to be unable to obtain or maintain gainful employment, award TDIU. **Do not send VA Form 21-8940 because the evidence that VA would obtain from this form is already of record due to the pension claim.**

Extra-schedular NSC Pension Conversion to Total Disability Ratings Based on Individual Unemployability

Question Presented:

Are field stations required to refer *Nehmer* cases to the Director, Compensation and Pension (C&P) Service prior to awarding TDIU for Herbicide-related diseases that previously served as the bases for extra-schedular pension awards under 38 C.F.R. § 3.321(b)(2) and 4.17(b)?

Background:

In an attempt to ensure rating consistency, accuracy, and fairness; and to increase efficiency and decrease logistical burdens for field stations, C&P Service previously provided instructions to stations processing *Nehmer* claims to award TDIU when awarding service connection for an Agent Orange (AO) related disease that previously served as the basis for an NSC pension award. This instruction included extra-schedular pension awards. To further assist field stations, C&P Service subsequently provided informal instruction that it is not necessary to forward such cases to the Director, C&P Service, for consideration of an extra-schedular TDIU award under 38 C.F.R. § 4.16(b) *if* an extra-schedular pension award has already been established by a duly appointed authority based on the same disability(ies) for which service connection is now in order.

C&P Service has since been asked to “further explain how the D1BC or ROJ can grant extraschedular IU under 38 CFR 4.16(b) when the court and a GC precedent opinion have stated that even BVA cannot grant an extraschedular evaluation without referral to the C&P Director?” (Citing *Floyd v. Brown* 9 Vet.App 88 (1996) and VAOPGCPREC 6-96.) *Floyd* and the proceeding General Counsel Opinion are inapplicable for the reasons that follow.

Analysis:

Regulations governing total disability ratings for compensation purposes are found at 38 C.F.R. § 3.341; likewise, regulations governing total disability ratings for pension purposes are found at 38 C.F.R. § 3.342. Each regulation references the criteria in 38 C.F.R. § 3.340 (“Total and permanent total ratings and unemployability”) for determining total disability. Section 3.340 mandates that “[t]otal disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation.” 38 C.F.R. § 3.340(a) (2009); see 38 C.F.R. §§ 4.16 and 4.17. The regulatory criteria that defines total disability/unemployability found at section 3.340 is applicable equally to compensation and pension.

For the purposes of this discussion, the only distinction between sections 4.16(b) and 4.17(b) is who has the authority for extra-schedular consideration, implicitly in the first instance. We acknowledge that such authority lay in the Director, C&P Service, under section 4.16(b) and in the Service Center Manager under section

4.17(b). These authorities coincide with the authorities found at 38 C.F.R. § 3.321(b)(1) and (2). Further, the subject at hand does not necessarily involve extra-schedular “evaluations” discussed in section 3.321(b)(1); but rather involves “final” determinations of total disability ratings for pension purposes, based on specific disability(ies), under sections 3.321(b)(2) and 4.17(b), and the interplay between those decisions and the remaining regulatory scheme.

That interplay renders *Floyd* and VAOPGCPREC 6-96 inapplicable to the narrow issue presented by *Nehmer*. The pertinent question raised in VAOPGCPREC 6-96 was, “[d]oes the Board have jurisdiction over extraschedular claims raised for the first time by the record or the appellant before the Board?” In addressing this question, General Counsel acknowledged that the Court of Veterans Appeals (now Court of Appeals for Veterans Claims (Court)) held that the Board may not assign an extra-schedular disability rating “under 38 C.F.R. § 3.321(b)(1) in the first instance.” *Floyd v. Brown*, 9 Vet.App. at 95 (emphasis added). The General Counsel, *inter alia*, echoed this in its 6-96 opinion. The instruction herein does not contradict the *Floyd* holding—the jurisdiction of first-instance, extra-schedular evaluations under section 3.321(b)(1) is not in question.

The *Floyd* Court did not address (and by extension, neither did General Counsel) the interplay between a final, and therefore binding, extra-schedular determination under sections 3.321(b)(2) and 4.17(b), and their effect when consideration is now made under 4.16(b) for the same disability and based on the same evidence. See 38 C.F.R. § 3.104(a)(2009); *Routen v. West* 142 F.3d 1434, 1437 1438 (C.A.Fed., 1998) (holding “[b]asic principles of finality and *res judicata* apply to such agency decisions”); See also *Astoria Fed. Savs. & Loan Ass’n v. Solimino*, 501 U.S. 104, 107-08, 111 S.Ct. 2166, 2169-70, 115 L.Ed.2d 96 (1991) (allowing the application of *res judicata* to administrative agency determinations that have attained finality). Therefore, unless otherwise provided by law, the cases are closed and the matter is ended. The issue in *Floyd* is thus narrowly presented and narrowly answered.

When viewed in the context of the issue presented in *Nehmer*, the Director, C&P Service, would be asked to render, based on the same factual record, an independent decision of whether total disability exists on an extra-schedular basis despite the fact that a final decision on the same issue, also on an extra-schedular basis already exists in the record. This would serve as an exercise in futility unless a different decision was reached, which would inject issues of questionable ethics, equity, and fairness. Further, reaching a different decision on the same factual record merely because compensation v. pension would result is arguably in excess of the authority provided in 4.16(b) and 3.104(a). Such a decision constitutes a final and binding agency decision in accordance with 38 C.F.R. § 3.104(a) and cannot be revised on the same factual basis.

Conclusion:

Field stations are not required to refer *Nehmer* cases to the Director, C&P Service, prior to awarding TDIU for Herbicide-related diseases under 38 C.F.R. § 4.16(b) that previously served as the bases for extra-schedular pension awards under 38 C.F.R. § 3.321(b)(2) and 4.17(b). (Training Letter 10-04 may be cited by field stations when preparing such decisions)

Claims for Service Connection

Claims for service connection may arise from:

- Informal claims
- Inferred claims
- Claims reasonably raised by VA
- For purposes of *Nehmer* review, a live pension claim is a claim for compensation

NOTE: Prior to September 21, 1992, RVSRs were required to code all claims and noted claims (See Footnote 1 in Appendix 18).

Issue(s)

Clearly state all issues of entitlement identified by the claimant or inferred based on the facts or circumstances of the claim. List the disability/disabilities and the current assigned evaluation(s). Also, specify any complications or other recognized herbicide-related conditions and the current assigned evaluation(s). See M21-1MR, Part III, iv.6.B.2.

Evidence and Evidentiary Basis

The Evidence section must contain a detailed, chronological listing of all evidence considered in arriving at the decision, but does not have to document “every” piece of evidence in the record if such evidence is completely unassociated with the *Nehmer* claim.

The evidence will include but is not limited to:

- Applicable dates, such as dates covered by service treatment records (STRs), identifying at least the month and year
- Private treatment reports
- Private hospitalization reports
- Information sources, such as the names of Department of Veterans Affairs (VA) and private medical facilities, private physicians, and other information sources,
- DD Form 214
- VA Form 21-526
- VA Form 21-534
- VA Form 21-530
- VA Form 21-601

- VA Form 21-4182, *Application for Dependency and Indemnity Compensation or Death Pension*, a supplemental attachment to Social Security application forms
- VA Examinations
- Social Security Administration Records
- Prior rating decision that denied service connection for the presumptive disability, unless this is an open claim
- Death Certificate/Autopsy Report
- All other information pertinent and related to the presumptive condition(s)

Decision

Clearly and concisely state the decision made on each issue or inferred issue. See M21-1MR, Part III, iv.6.C.9

Reasons for Decision

The rating decision must concisely cite and evaluate all evidence that is relevant and necessary to the determination. Clearly explain why the evidence is found to be persuasive or unpersuasive, and address all pertinent evidence relating to the presumptive condition(s).

NOTE: *Nehmer* decisions will be stand-alone documents as they will be reviewed without the claims folder by others as well as class counsel. Class counsel will **not** have the claims folder during their review, therefore, it is crucial all evidence pertinent to the presumptive condition(s) is listed and properly discussed in the decision.

Coding and Assigning a Percentage

The Cardiovascular System in the Rating Schedule was revised effective January 12, 1998. A grant of IHD prior to January 12, 1998, will require application of the Rating Schedule that was applicable on January 12, 1998. These evaluations are protected if there is no change in the condition AND the new regulation would result in a lower evaluation. However, if the new criteria provides for a higher evaluation, grant the entitlement effective the change in regulation (38 U.S.C. § 1155; 38 C.F.R. § 3.114(a)).

Special Monthly Compensation

Special monthly compensation entitlement must be considered as appropriate. Many times (S)1 (schedular housebound - single 100 percent and additional service connected conditions which combine to 60 percent), is in order when we grant an additional 100 percent under *Nehmer* (38 U.S.C. 1114(s) and 38 C.F.R. 3.350(i)).

Effective Date

The effective date of claims for service connection is the later of the date VA received the claim on which the prior denial was based or the date the disability arose.

For purposes of *Nehmer* IHD, PD, or HCL claims, the date a disability arose is the date VA had sufficient evidence or information to identify the existence of such a disease or, the evidence or information available was sufficient to “code” IHD, PD, or HCL as a disability pursuant to guidance regarding coding contained in the Veterans Benefits Adjudication Manual M21-1MR, and/or prior versions of such manual.

NOTE: 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.114 **do not apply** to *Nehmer* claims.

Claims for Service-Connected Death

VA Form 21-534 must be considered for DIC if:

- Only death pension (NSC) was claimed **or**
- No distinction was made between death pension and DIC

VA Form 21-530, *Application for Burial Benefits*, must be considered for DIC if:

- SC was indicated on VA Form 21-530 and VA Form 21-534 was received within one year¹
- VA’s failure to provide VA Form 21-534 after receipt of VA Form 21-530 with SC indicated²
- In each instance, the effective date for the DIC benefits is the date the VA Form 21-530 was received³
- Receipt of attachment to Social Security Application, VA Form 21-4182, *Application for Dependency and Indemnity Compensation or Death Pension*, may establish the date of claim

38 C.F.R. § 3.150(b), Forms to be Furnished, receipt of notice of death must be considered if appropriate application form was not forwarded for execution by or on behalf of any dependent who has apparent entitlement to pension, compensation or DIC.

Evidence

For purposes of a *Nehmer* review, the standards for the evidence section of a rating decision for service-connected death do not differ from those of a rating decision for service connection. The evidence must show all the evidence pertaining to the claim identified for *Nehmer* review. Refer to the Evidence subsection of the Claims for Service Connection section for details on the requirements for Evidence.

¹ 38 C.F.R. § 3.152 (b)(1); Mitscher v. West, 13 Vet. App. 123, 128 (1999)

² 38 C.F.R. § 3.155(a).

³ 38 C.F.R. § 3.152 (b)(1); Mitscher v. West, 13 Vet. App. 123, 128 (1999)

Issue(s), Decision(s), and Reasons for Decision

For purposes of a *Nehmer* review, the standards for these elements (Issue, Decision, and Reasons for Decision) of a rating decision for service-connected death do not differ from those of a rating decision for service connection. Please refer to the subsection in the Claims for Service Connection section for guidance.

NOTE: A grant of DIC is appropriate when the presumptive condition is:

- Primary cause of death
- Secondary cause of death
- Contributory cause of death

Effective Date

The effective date for DIC claims must be one of the following dates:

- The date VA received the claim, or
- The first of the month of the Veteran's death, if filed within one year from the date of the Veteran's death.

Dependents Educational Assistance (DEA) - Chapter 35

A new period of DEA eligibility may accrue when the Veteran dies. As such, the issue of DEA eligibility may be considered twice in a single rating, once on the basis of retroactive entitlement when the Veteran was alive, and a second time for death benefits purposes.

See Appendix 7 for Example Rating Decisions for DIC.

Claims for Service Connection and Service-Connected Death

Note that *Nehmer* claims may contain multiple issues, but that these issues are addressed in a single rating decision. All *Nehmer* claims involving claims for service connection and service-connected death must be addressed in one rating decision.

Coding Considerations

In order to generate live coding for a death case, you **MUST** use the "accrued" indicator in RBA2000. It is on the "Profile" screen (the screen on which you enter the jurisdiction and date of claim) on the left side, about halfway down. It will be accessible only for a death case. If you don't use the "accrued" indicator, the Master Record will allow you to enter all the historical live coding data, but will print only the death data.

Issue(s), Decision(s), and Reasons for Decision

For purposes of a *Nehmer* review, the standards for these elements (Issue, Decision, and Reasons for Decision) of a rating decision for service-connected

death do not differ from those of a rating decision for service connection. Please refer to the subsection in the Claims for Service Connection section for guidance.

NOTE: After completion of the rating, the Database should be updated to track all actions associated with a class member's claim.

AUTHORIZATION

The VSR and SVSR are responsible for assuring that the rating decision, award action(s), and notice of decision with appeal rights are accurate and properly prepared for all benefits. This includes live compensation claims, DIC claims, burial claims, and other retroactive benefits.

This section involves award processing for the following types of claims:

- 1) Live Veterans Claims
- 2) DIC Claims
- 3) Burial Claims

Prior to award input, the *Nehmer* database must be utilized to ensure previous actions associated with a class member's claim were completed. This will include **re-verifying in-country RVN service and the initial document used to support the effective date shown in the rating decision**. If any discrepancy is found, it will be brought to the attention of the RVSR that rated the claim for possible corrective action or concurrence.

Live Veterans Claims

Prepare the award under the appropriate EP as instructed by the *Nehmer* Project Manager (Southern Area Office).

In situations where payment is not necessary, clear the EP and do not prepare an award. Examples of such instances include confirmed and continued rating decisions.

The following sections provide additional information on dependents, previous cost of living adjustments (COLAs), and withholding for military pay.

Dependents

If the Veteran's new combined evaluation for compensation is 30 percent or above, additional compensation is payable based on qualified dependents (to include Helpless Child).

If development for dependency was not completed prior to the rating decision, request the required evidence after processing the rating decision. Clear the EP in these situations.

Kicker / Public Law 101-508

Veterans that were in receipt of compensation benefits on December 1, 1990, did not receive a COLA until January 1, 1991. Public Law 101-508 reinstated the December 1, 1990, COLA. This was payable on March 1, 1992. This one-time payment was known as the “kicker.” VETSNET must be manually adjusted to account for the kicker.

Liesegang, et al v. Secretary of Veterans Affairs

On December 10, 2002, the US Court of Appeals for the Federal Circuit issued a decision in the case of *Liesegang, et al v. Secretary of Veteran Affairs*. The Court held that the correct effective date for our regulation adding Type 2 diabetes to the list of presumptive disabilities related to herbicide exposure is May 08, 2001, instead of July 9, 2001.

As a result of that decision, VA issued an automatic one-time adjustment to 9,340 Veterans granting an earlier payment date of June 1, 2001. The one time payment was made on August 4, 2003. In each adjusted case a notice was issued to the Veteran, POA, and RO. An additional 4,680 cases were manually reviewed. When reviewing the current *Nehmer* cases that may have previously involved Type 2 diabetes you must assure that this adjustment was actually made. This may require a thorough review of the claims folder. It is important that the Veteran gets paid correctly when entering the information into the prior payment field in VETSNET for retroactive awards.

Withholding for Military Pay

In claims that involve military retired pay, the authorization activity must ensure that all proper adjustments are made correctly. Verify the Veteran waived his or her military pay in lieu of compensation. This can be found on VA Form 21-526 or VA Form 21-651, *Election of Comp in Lieu of Retired Pay or Waiver of Retired Pay to Secure Comp from VA*.

NOTE: Prior to 1978, a signature block was not included on VA Form 21-526. A copy of Form 21-651 must be of record.

In some instances, the Veteran may have received separation, severance pay, or drill pay that must be adjusted. In these instances the authorization activity must assure that all adjustments are made properly.

NOTE: In some circumstances Veterans may receive full military retirement pay and VA compensation benefit payments.

NOTE: Retired pay rates will be obtained from DFAS database.

DIC Claims

The authorization activity must check all dependency information prior to awarding benefits. Only the proper claimant(s) can be paid.

Prepare the award under an appropriate EP as instructed by the *Nehmer* Project Manager (Southern Area Office). Be sure the payee number for the EP is appropriate for the claimant. For more information on payee codes, see M21-1 Part I, Appendix C.

Additional Allowances

When preparing the award, be sure to include any additional allowances that the surviving spouse may be entitled. For example, an additional allowance for:

- Dependents
- Total disability rating for a continuous period of eight years or more preceding death and the spouse married to the Veteran during the same time period

Death Prior to December 31, 1992

If the Veteran died prior to January 1, 1993, DIC is paid to a surviving spouse based on whichever of the following provisions provides the greater benefit:

- 38 U.S.C. § 1311a(3), which is based on the Veteran's pay grade, or
- 38 U.S.C. § 1311a(1) and 38 U.S.C. § 1311a(2), which is based on the basic rate of DIC and any additional allowance payable because the Veteran was rated as totally disabled for at least eight continuous years and married to the surviving spouse for the same period of time

The pay grade for all Veterans who died prior to December 31, 1992, must be verified. Pay grade may be found on the DD Form 214 or other service documents.

A verified pay grade code is not required on:

- Awards of DIC to children or parents, or
- Awards based on a Veteran's death after December 31, 1992

Withholding for SBP Payments

In claims that involve SBP, the authorization activity must assure that all proper adjustments are made correctly. Under a recent Federal Circuit decision, DFAS cannot deduct DIC payments from monthly SBP annuities, if the annuitant is entitled to both DIC and SBP benefits, and has remarried after age 57.

NOTE: SBP payments may be obtained from DFAS database.

Remarriage of the Surviving Spouse

The Surviving Spouse may have remarried after the death of the Veteran. Please review M21-1MR, IV.III.3.F.23, General Information on the Effect of a Surviving Spouse's Remarriage, for additional guidance.

Month of Death Payment

Before awarding the month of death payment, verify that the surviving spouse has not received this payment by using the Payment History Inquiry Screen in Corporate and a review of the claims folder.

Consideration of VA Form 21-4182, *Application for Dependency and Indemnity Compensation or Death Pension*, must be recognized as a claim for VA death benefits (See M21-1MR IV.iii.3.A.4 and 38 C.F.R. § 3.153).

VA Form 21-4182 constitutes an initial claim for any or all of the death benefits:

- DIC
- Death pension, and/or
- Accrued benefits.

Additional information may be found M21-1MR III.ii.2.C.14.b.

Burial Claims

Before awarding monetary burial benefits the authorization activity must verify all evidence is of record.

Prepare the award under an appropriate EP as instructed by the *Nehmer* Project Manager (Southern Area Office).

The following sections provide additional information on dependents, previous cost of living adjustments, and withholding for military pay.

Burial Claims Prior to the Current December 1, 2001, Rate

Please be aware that service connected burial payments were less than \$2000 prior to December 1, 2001. See the table below for a list of prior rates and their effective dates.

Burial Amounts			
Date	SC Amount	NSC Burial Amount	NSC Plot Amount
06-18-73	\$800	\$250	\$150
10-01-78	1100	300	150
04-01-88	1500	300	150
09-11-01*	2000	300	300

12-01-01	*2000	300	300
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* The SC burial amount was increased on December 1, 2001, and is effective for deaths that occurred on or after September 11, 2001.

Prior Payments of NSC Burial

Check the claims folder for any prior payments of NSC burial. This amount must be deducted from the total amount for service connected benefits payable.

Retroactive Benefits

Prepare the award under an appropriate EP as instructed by the *Nehmer* Project Manager (Southern Area Office). Ensure that the correct rates and total retroactive amounts have been calculated correctly. If multiple payees exist, prepare awards using different payee codes, dividing the total amount equally.

Award Annotation

The VSR must annotate the award with “*Nehmer* Retroactive payment based on [the name of new presumptive condition]” in the remarks section of the award printout.

Notification Letter

Use PCGL to generate the notification letters. Be sure to suppress the BDN-generated letters as only locally generated letters may be issued. Examples of the notification letters for live cases and death cases can be found in Appendix 9.

For burial claims, use the standard burial letter found in PCGL to generate the notification letters. This letter should be merged with the death letter, when there was a claim for DIC.

Verify the letter contains a calculation of the retroactive amount and be sure to include all ancillary benefits that the Veteran or his/her dependents may be entitled. Award and denial letters must include:

- The decision made
- The monthly VA rates
- The applicable effective dates
- Any benefits being withheld and the reason for withholding benefits
- Estimated retroactive benefit
- Appellate rights of the claimant
- Information about any additional benefits or entitlements the claimant may be due

After award authorization, the letters must be scanned into Virtual VA. For more information on using Virtual VA, see the Virtual VA User Guide.

SME Quality Reviews

VA will use a two-tier review process for ratings, and a two-tier review process for authorization. Prior to processing a rating decision, all *Nehmer*-related ratings must undergo a review by a *Nehmer* rating SME. This review will include providing a second signature on the rating decision and completing the rating portion of the SME review checklist (Appendix 17).

Upon completion of the rating review, the award action and notice of decision (award letter) will be reviewed and authorized by a designated authorizing SME. In addition to authorizing the case, the authorizing SME will also complete the authorization portion of the SME review checklist. The SME reviewers must conduct a review of their respective areas of responsibility. The checklist **must** be incorporated into the claims file. This includes a checklist that annotates errors that are subsequently corrected.

The SMEs should not conduct quality reviews in cases wherein they were any of the following:

- Veterans Service Representative that prepared development or award action; or
- Rating Veterans Service Representative that prepared the rating decision.

NEHMER CASE REVIEW AND SERVICE CONNECTION FOR DISEASES ASSOCIATED WITH HERBICIDE EXPOSURE AS DESCRIBED IN 38 C.F.R. 3.307(A)(6) TO 38 C.F.R. 3.307(a)(6)

Compensation and Pension Service has become aware of some confusion among regional office personnel regarding the *Nehmer* case review and service connection for diseases associated with herbicide exposure. The *Nehmer* case review is based on a court order focusing on the newly recognized herbicide exposure related diseases of B-cell leukemias, Parkinson's disease, and ischemic heart disease. **Only** Veterans with duty or visitation in the Republic of Vietnam, or on its inland waterways, between January 9, 1962, and May 7, 1975, make up the class of Veterans affected by the *Nehmer* review. The Agent Orange Act of 1991 established a presumption of herbicide exposure for these Veterans and service connection for the new diseases can be granted on a presumptive basis.

However, service connection for these new diseases is not restricted to Vietnam Veterans. Any Veteran who is acknowledged by VA as having been exposed to Agent Orange or other tactical herbicides, as described at 38 CFR 3.307(a)(6),

may be service connected when diagnosed with one of the new diseases or with any disease on the list at 38 CFR 3.309(e). This includes Veterans who served in certain units that operated at or near the Korean Demilitarized Zone (DMZ) between April 1968 and July 1969. It also includes any Veteran who establishes exposure at one of the locations identified by the Department of Defense as a site outside Vietnam or the Korean DMZ where tactical herbicides were used, tested, or stored.

Although service at one of these other locations does not carry a presumption of tactical herbicide exposure, if exposure is acknowledged on a facts-found basis, it qualifies the Veteran for service connection of the diseases associated by VA with such exposure. In these cases, service connection can be granted on a direct basis, but there is no need to request medical evidence of a nexus between the Veteran's current herbicide related disease and the acknowledged in-service exposure. That medical nexus is already provided by the National Academy of Sciences' Institute of Medicine's biennial scientific reports, *Veterans and Agent Orange*, which establish a "positive association" between the diseases and herbicide exposure. As a result, direct service connection can be granted and the claim processed in a manner equivalent to that used for presumptive service connection.

Specific Instructions for D1BCs

If, when reviewing potential *Nehmer* claims, D1BCs determine that a claimant is not a class member by virtue of not having served in Vietnam, but may still qualify for AO related benefits because of exposure elsewhere, such as Korea, the file should be flashed for the RO of Jurisdiction. This should help ensure the Veteran receives proper consideration for a possible AO related disability, even though the Veteran may not be a *Nehmer* class member.

REQUESTS FOR EXCLUSION FROM THE *NEHMER* CLASS

VA is required under the *Nehmer* stipulation to readjudicate previously denied claims of newly established presumptive conditions. A potential class member or class member may waive eligibility for readjudication by directing class counsel, the National Veterans Legal Services Program, to submit to counsel for the Secretary, a request to be excluded from the *Nehmer* class. When such a response is received VA will insert the exclusion letter in the claim file and will discontinue any action regarding *Nehmer* readjudication.

APPENDICES

Appendix 1 – List of Presumptive Conditions in 38 C.F.R. § 3.816

The following is a list of conditions presumptively associated with herbicide exposure and the dates the regulations governing the presumptions became effective, as found in 38 C.F.R. § 3.816 (b)(2):

Soft-tissue Sarcoma	October 15, 1991
Hodgkin's disease	February 3, 1994
Non-Hodgkin's lymphoma	May 19, 1993
Porphyria cutanea tarda	February 3, 1994
Lung cancer	June 9, 1994
Bronchus cancer	June 9, 1994
Larynx cancer	June 9, 1994
Trachea cancer	June 9, 1994
Multiple myeloma	June 9, 1994
Acute and Subacute peripheral neuropathy	November 7, 1996
Prostate cancer	November 7, 1996
Type 2 Diabetes	May 8, 2001
Chronic lymphocytic leukemia (CLL)	October 16, 2003
AL Amyloidosis (ALA)	May 7, 2009
Ischemic heart disease	August 31, 2010
Parkinson's disease	August 31, 2010
B-cell leukemia	August 31, 2010

Appendix 2 – Navy and Coast Guard Ships Associated with Service in Vietnam and Exposure to Herbicide Agents

This ships list is intended to provide VA regional offices with a resource for determining whether a particular US Navy or Coast Guard Veteran of the Vietnam era is eligible for the presumption of Agent Orange herbicide exposure based on operations of the Veteran's ship.

According to 38 CFR § 3.307(a)(6)(iii), the presumption of herbicide exposure requires that the Veteran's service involved "duty or visitation in the Republic of Vietnam." For those Veterans who served aboard ships operating primarily or temporarily on the inland waterways of Vietnam, their service involved "duty" in Vietnam. In such cases, the evidence must show that the ship was on the inland waterways and the Veteran was aboard at that time. For those Veterans who served aboard ships that docked and the Veteran went ashore, or served aboard ships that did not dock but the Veteran went ashore, their service involved "visitation" in Vietnam. In cases involving docking, the evidence must show that the Veteran was aboard at the time of docking and the Veteran must provide a statement of personally going ashore. In cases where shore docking did not occur, the evidence must show that the ship operated in Vietnam's close coastal waters for extended periods, that members of the crew went ashore, or that smaller vessels from the ship went ashore regularly with supplies or personnel. In these cases, the Veteran must also provide a statement of personally going ashore.

This list includes three categories of ships:

Ships operating primarily or exclusively on Vietnam's inland waterways

- Ships operating temporarily on Vietnam's inland waterways or docking to the shore
- Ships operating on Vietnam's close coastal waters for extended periods with evidence that crew members went ashore or that smaller vessels from the ship went ashore regularly with supplies or personnel

This list is not complete. Therefore, the presumption of herbicide exposure should not be denied solely because the Veteran's ship is not on this list. Additionally, when regional office personnel obtain evidence showing that a ship fits into any of these categories, the evidence should be forwarded to the Compensation and Pension Service Agent Orange Mailbox [VAVBAWAS/CO/211/AGENTORANGE] so that the ship can be added to the listing.

Ships operating primarily or exclusively on Vietnam's inland waterways

Vessel
All vessels referred to in military records as part of the "Mobile Riverine Force"
All vessels with the designation LCM [Landing Craft, Mechanized]
All vessels with the designation LCVP [Landing Craft, Vehicle, Personnel]
All vessels with the designation LST [Landing Ship, Tank]
All vessels with the designation PBR [Patrol Boat, River]
All vessels with the designation PCF [Patrol Craft, Fast or Swift Boat]
All U.S. Coast Guard Cutters with hull designation WPB [Patrol Boat], WHEC [High Endurance Cutter], WLB [Buoy Tender], and WAK [Cargo Vessel] during their Vietnam tours
All vessels of Inshore Fire Support [IFS] Division 93, including:
USS Carronade (IFS 1)
USS Clarion River (LSMR 409) [Landing Ship, Medium, Rocket]
USS Francis River (LSMR 525)
USS White River (LSMR 536)
All vessels with hull designation PG [Patrol Gunboat], including:
USS Asheville (PG-84)
USS Gallop (PG-85)
USS Antelope (PG-86)
USS Ready (PG-87)
USS Crockett (PG-88)
USS Marathon (PG-89)
USS Canon (PG-90)
USS Mark (AKL-12) [Light Cargo Ship]
USS Brule (AKL-28)
USS Cohoes (AN-78) [net laying ship]
USS Patapsco (AOG-1) [Gasoline Tanker]
USS Elkhorn (AOG-7)
USS Genesee (AOG-8)
USS Kishwaukee (AOG-9)
USS Tombigbee (AOG-11)
USS Noxubee (AOG-56)
USS Montrose (APA-212) [Attack Transport]
USS Okanogan (APA-220)
USS Bexar (APA-237)
USS Benewah (APB-35) [Self-Propelled Barracks Ship]
USS Colleton (APB-36)
USS Mercer (APB-39)
USS Nueces (APB-40)

Barracks Barge (APL-26) [Sleeping Quarters]
Barracks Barge (APL-30)
USS Tutuila (ARG-4) [Repair Ship]
USS Satyr (ARL-23) [Repair Ship]
USS Sphinx (ARL-24)
USS Askari (ARL-30)
USS Indra (ARL-37)
USS Krishna (ARL-38)
USS Belle Grove (LSD-2) [Landing Ship Dock]
USS Comstock (LSD-19)
USS Tortuga (LSD-26)
Floating Base Platform (YRBM-17) [Repair, Berthing, and Messing Barge]
Floating Base Platform (YRBM-18)
Floating Base Platform (YRBM-20)
USN Harbor Tug 84 (YTB-84)
USN Harbor Tug 85 (YTB-85)
USN Winnemucca (YTB-785)

Ships operating temporarily on Vietnam's inland waterways or docking to shore

Vessel	Description
USS Card (ACV-11)	[Escort Aircraft Carrier] mined, sunk, and salvaged in Saigon River Harbor during May 1964
USS Kula Gulf (CVE-108)	[Small Aircraft Carrier: used as helicopter and troop transport] docked at Cam Ranh Bay November 13-16, 1965
USS Pictor (AF-54)	[Stores Ship] delivered supplies to Dong Ha on Cua Viet River during September 1967 and docked to the pier at Da Nang during 1969
USS Niagara Falls (AFS-3)	[Combat Stores Ship] unloaded supplies on Saigon River and Cam Ranh Bay, April 22-25, 1968
USS Maury (AGS-16)	[Mapping Survey Ship] conducted surveys of Mekong River Delta and other coastal areas and rivers from November 1965 through 1969
USS Tanner (AGS-15)	Conducted surveys of Mekong River Delta and other coastal areas and rivers from October 1966 through 1968
USS Serrano (AGS-24)	Conducted mapping surveys of Mekong River Delta and other coastal and river areas from 1966 through 1969

USS Merrick (AKA-97)	[Attack Cargo Ship] operated on Mekong River Delta and Saigon River during 1966 and docked at Da Nang during September 1968
USS Ponchatoula (AO-148)	[Oiler] operated on Mekong River Delta during July 1971
USS Kansas City (AOR-3)	[Replenishment Oiler] docked at Da Nang on August 6 and 19, 1971
USS Henrico (APA-45)	[Amphibious Attack Transport] operated on Hue River during March 1965 and conducted numerous troop landing through March 1967
USS Montrose (APA-212)	Operated on Song Hue River during December 1965, operated on Long Tau River during March 1967, and operated on Cua Viet River and at Dong Ha during May 1967
USS Talladega (APA-208)	Operated on Saigon River during October 1967
USS Grasp (ARS-24)	[Salvage Ship] conducted salvaging operations on Song Cua Dia River and other inland waters from February through April 1969
USS Bolster (ARS-38)	Crew operated on land to extract USS Clark County (LST-601) from beach after grounding at Duc Pho from November 18 to December 1, 1967
USS Reclaimer (ARS-42)	Operated in Saigon Harbor to salvage USS Card (ACV-11) from sinking in Saigon River during May 1964 and in Rung Sat Special Zone of Mekong River Delta salvaging ships during early 1966
USS Tillamook (ATA-192)	[Auxiliary Ocean Tug] operated on Long Tau branch of Saigon River during January 1966
USS Mahopac (ATA-196)	Operated on Mekong River from October 30-November 3, 1966
USS Tawakoni (ATF-114)	[Fleet Ocean Tug] operated in Saigon Harbor to salvage USS Card (ACV-11) from sinking in Saigon River during May 1964
USS Canberra (CAG-2)	[Guided Missile Cruiser] operated on Saigon River from March 31 through April 1, 1966, on Cua Viet River during December 15, 1966, and on Mekong Delta Ham Luong River during January 15, 1967
USS Providence (CLG-6)	[Light Guided Missile Cruiser] operated on Saigon River 3 days during January 1964 and on Cua Viet River during August 1972
USS Conway (DD-507)	[Destroyer] operated on Saigon River during early August 1966
USS Sproston (DD-577)	Operated on Mekong River Delta and Ganh Rai Bay during January 1966
USS Braine (DD-630)	Docked to pier at Da Nang on November 27, 1966
USS Ingersoll (DD-652)	Operated on Saigon River October 24-25, 1965

USS Black (DD-666)	Operated on Saigon River July 13-19, 1966
USS Picking (DD-685)	Operated on Saigon River during November 16, 1965
USS Ault (DD-689)	Operated on Mekong River Delta and Soirap River during May 26, 1967
USS Ingraham (DD-694)	Operated 10 miles up Saigon River on November 12, 1965
USS Hamner (DD-718)	Operated on Song Lon Tao and Long Song Tao Rivers, August 15-September 1, 1966
USS Epperson (DD-719)	Docked to Da Nang Pier on October 4, 1970
USS Walke (DD-723)	Operated on Mekong River Delta at Vung Ganh Rei September 2, 1969
USS Mansfield (DD-728)	Operated on Saigon River August 8-19, 1967 and December 21-24, 1968
USS Lyman K. Swenson (DD-729)	Traveled up Saigon River for a four-day visit to Saigon during May 1964
USS Southerland (DD-743)	Operated on Song Nga Bay and Saigon River during July 1966
USS Taussig (DD-746)	Operated on Soirap River in Mekong River Delta during June 15-26, 1966
USS Loftberg (DD-752)	Operated on Song Nha Be River during February 18-21 and April 14-15, 1969 and on Song Cua Dai River during April 10-12, 1969
USS Strong (DD-758)	Operated in Mekong River Delta and Rung Sat Special Zone during April 1968
USS John W. Thomason (DD-760)	Operated on Nga Be River during 1969
USS Buck (DD-761)	Operated on Mekong River Delta and Saigon River during October 1966
USS Rowan (DD-782)	Operated on Song Tra Khuc River during June 1965
USS Preston (DD-795)	Operated on Mekong River Delta, Ganh Rai Bay, and Saigon River during September 28 – 29 and December 27 – 29, 1965
USS Chevalier (DD-805)	Operated on Saigon River during June 15-21, 1966, and on Vung Ganh Rai area of Mekong River Delta during January 25, 1968
USS Higbee (DD-806)	Operated on Vung Ganh Rai area of Mekong River Delta during March 1-12, 1969
USS Dennis J Buckley (DD-808)	Operated on Mekong River Delta, Saigon River, and Ganh Rai Bay from December 19, 1966 to January 16, 1967
USS Holder (DD-819)	Operated on Vung Ganh Rai and Saigon River during August 5, 1966
USS Basilone (DD-824)	Operated on Saigon River, May 24-25, 1966

USS Fiske (DD-842)	Operated on Mekong River, June 16-21, 1966
USS Warrington (DD-843)	Operated on Mekong River Delta Rung Sat Special Zone, North of Vung Ganh Rai Bay during March 1967
USS Richard E. Kraus (DD-849)	Operated on coastal inlet north of Da Nang during June 2-5, 1966, protecting Marines holding a bridge
USS Leonard F. Mason (DD-852)	Operated on Vung Ganh Rai Bay and channels during August 1969
USS Brownson (DD-868)	Operated on Song Nha Be and Ganh Rai Bay areas of Mekong River Delta during February 1967
USS Damato (DD-871)	Operated on Saigon River during December 12-13, 1967
USS Perkins (DD-877)	Operated on Saigon River during June 1969
USS Leary (DD-879)	Operated on Baie de Ganh Rai of the Mekong River Delta on October 9, 1967
USS Dyess (DD-880)	Operated on Saigon River and Rung Sat Special Zone from June 19–July 1, 1966
USS Newman K. Kelly (DD-883)	Operated on Mekong River Delta and Saigon River November 23-28, 1966
USS Orleck (DD-886)	Operated on Mekong River Delta during July 1969
USS Mullinnix (DD-944)	Operated on Vung Ganh Rai and Saigon River during August 5-6, 1966
USS Henry B. Wilson (DDG-7)	Guided Missile Destroyer] docked at Da Nang pier on April 2, 1967
USS Joseph Strauss (DDG-16)	Operated on Mekong River Delta March 4, 1966 and Ganh Rai Bay during November 7 and December 7, 1968
USS Waddell (DDG-24)	Operated on Cua Viet River during March 1967
USS Davidson (DE-1040)	[Destroyer Escort] operated on Vung Ganh Rai and Rung Sat Special Zone of Mekong River Delta from September 16 to October 5, 1967
USS Lang (DE-1060)	Docked to pier #4 in Da Nang Harbor for 38 minutes on January 5, 1972
USS Newell (DER-322)	[Destroyer Escort Radar] docked at port of Nha Trang during December 22-24, 1965
USS Mahan (DLG-11)	[Guided Missile Frigate] operated on Saigon River October 24-28, 1964
USS Duluth (LPD-6)	[Amphibious Transport Dock] docked to pier at Da Nang during March and October 1971
USS Dubuque (LPD-8)	Docked at Da Nang on March 15, 1970
USS Boxer (LPH-4)	[Amphibious Assault Ship] docked to pier at Cam Ranh Bay on September 9, 1965
USS Catamount (LSD-17)	[Landing Ship Dock] operated on Song Nah Be River during April 1969

USS Conflict (MSO-426)	[Minesweeper] operated on Saigon River April 1, 1966 and Song Huong River (Perfume River) May 14, 1966
USS Fortify (MSO-446)	Travelled up the Saigon River to Saigon September 19-22, 1964
USS Inflict (MSO-456)	Travelled up the Saigon River to Saigon September 19-22, 1964
USS Loyalty (MSO-457)	Travelled up the Saigon River to Saigon September 19-22, 1964
USS Geiger (T-AP-197)	[Military Transport] docked at Qui Nhon November 23-26, 1965

Ships operating on Vietnam's close coastal waters for extended periods with evidence that crew members went ashore or that smaller vessels went ashore regularly with supplies or personnel

Vessel	Description
USS Mars (AFS-1)	[Combat Stores Ship] conducted numerous on shore supply replenishments at Da Nang, Cam Ranh Bay, Vung Tau, and An Thoi from July 1965 to November 1972 with evidence of crewmembers going ashore
USS Estes (AGC-12)	[Amphibious Assault Command Ship] Conducted troop and supply beach landings during March and July-August 1965, at Chu Lai, Da Nang, and Qui Nhon
USS Vega (AF-59)	[Stores Ship] conducted resupply operations in the Mekong River Delta area on September 13, 1966; on-loaded supplies at An Thoi, Vung Tau, Cam Ranh Bay, and Da Nang during June 1969; and delivered supplies to Da Nang, Cam Ranh Bay, Con Son, An Thoi, and Hon Choi during November-December 1970
USS Repose (AH-16)	[Hospital Ship] operated continuously on close coastal waters from 1966-1970, with the likelihood that crewmembers went ashore on liberty leave
USS Sanctuary (AH-17)	Operated continuously on close coastal waters from 1967-1970, with the likelihood that crewmembers went ashore on liberty leave
USS Mathews (AKA-96)	[Attack Cargo Ship] on-loaded supplies at Da Nang and delivered them up the Cua Viet River to Dong Ha with "mike boats" from August through December 1967
USS Skagit (AKA-105)	Conducted troop and cargo beach "mike boat" landings at Da Nang, Chu Lai, and Quang Ngai from November 1965 to November 1967

USS Union (AKA/LKA-106)	[Attack/Amphibious Cargo Ship] anchored in mouth of the Hue River while conducting operations during April 1965 and conducted troop and cargo “mike boat” beach landings at Da Nang and Cam Ranh Bay from 1965 to 1969
USS Tulare (AKA/LKA-112)	Conducted troop and cargo “mike boat” beach landings at Da Nang, Chu Lai, Cam Ranh Bay, and Vung Tau from 1966 to 1972
USS George Clymer (APA-27)	[Amphibious Attack Transport] conducted troop and supply “mike boat” beach landings during July 1965, and March-July 1966, at Da Nang and Chu Lai
USS Bayfield (APA-33)	Conducted troop on loading and “mike boat” landings at Da Nang, Chu Lai, Baie de My Han, and Cua Viet River from July through October 1965 and February through May 1967
USS Hector (AR-7)	[Repair Ship] anchored in Vung Tau Harbor repairing other vessels from July 20 to August 16, 1970, with deck logs stating that crew members went ashore on liberty leave
USS Currituck (AV-7)	[Sea Plane Tender] travelled up Saigon River to Saigon during early 1964; operated in Mekong River Delta during June 1965; anchored at Cam Ranh Bay for month long periods during 1966 and 1967 to repair and tend to Navy sea planes, with the likelihood that crewmembers went ashore on liberty leave
USS Pine Island (AV-12)	Anchored at Da Nang during August 1964, and Cam Ranh Bay for month long periods during 1965 and 1966, to repair and tend to Navy sea planes, with the likelihood that crewmembers went ashore on liberty leave
USS Salisbury Sound (AV-13)	travelled up Saigon River to Saigon during June 1964, and anchored at Cam Ranh Bay for month long periods during 1966, to repair and tend to Navy sea planes, with the likelihood that crewmembers went ashore on liberty leave
USS Chicago (CG-11)	[Guided Missile Cruiser] while anchored in Da Nang Harbor on May 22, 1969, deck logs show a utility boat went ashore for one hour with 8 crewmembers aboard
USS Wiltsie (DD-716)	[Destroyer] while anchored off the coast, two officers and five sailors went ashore by helicopter for one night during September 1970
USS Blue (DD-744)	Anchored in Da Nang Harbor on April 21, 1968, with crewmembers going ashore for picnic

USS Myles C. Fox (DD-829)	Anchored off Qui Nhon and Nha Trang with crewmembers going ashore during February 5-20, 1967
USS Cleveland (LPD-7)	[Amphibious Transport Dock] operated on Cua Viet River and at Dong Ha, as well as Hue River, with “mike boats” from November 1967 through 1968 and on the Saigon River during September 1969
USS Carter Hall (LSD-3)	[Landing Ship Dock] conducted troop-landing operations with “mike boats” at Da Nang, Dong Ha on Cua Viet River, and Nha Be on Saigon River, as well as three-month duty as “boat repair ship” at Da Nang, from July 1965 to August 1968
USS Whetstone (LSD-27)	On-loaded and delivered troops to Da Nang, Hue, Phu Bai, Dong Ha with beach landings and “mike boats” and served as long term “boat havens” for repairs of smaller vessels at Da Nang and Qui Nhon during 1965, 1966, 1968, and 1969
USS Epping Forest (MCS-7)	[Mine Countermeasure Support Ship] conducted mine sweep of Cua Viet River using smaller vessels from main ship during May 1968

Appendix 3 – Naval and Coast Guard Development

The current development and due process requirements for Navy and Coast Guard claims include sending a request for research to the JSRRC for verification exposure. In order to expedite the resolution of these claims, JSRRC provided a document for inclusion in the Veteran's file.

This document substitutes as a response from the C&P Service Agent Orange Mailbox as well as from JSRRC and explains that there is no available evidence to support a claim of herbicide exposure aboard a Navy or Coast Guard ship during Vietnam. It will serve as a final JSRRC response in claims where the Veteran alleges exposure based on: (1) loading herbicide agents aboard a naval ship for transportation to Vietnam, (2) serving aboard a ship that transported, stored, used, or tested herbicide agents, and (3) working on shipboard aircraft that flew over Vietnam or equipment that was used in Vietnam.

JSRRC Memorandum

**DEPARTMENT OF THE ARMY
U.S. ARMY & JOINT SERVICES RECORDS RESEARCH CENTER
7701 TELEGRAPH ROAD
KINGMAN BUILDING, ROOM 2C08
ALEXANDRIA, VA 22315-3828**

AAHS-RDC 01 May 09

MEMORANDUM FOR RECORD

SUBJECT: Joint Services Records Research Center Statement on Research Findings Regarding Navy and Coast Guard Ships During the Vietnam Era

1. In the course of its research efforts, the JSRRC has reviewed numerous official military documents, ships histories, deck logs, and other sources of information related to Navy and Coast Guard ships and the use of tactical herbicide agents, such as Agent Orange, during the Vietnam Era.
2. To date, the JSRRC has found no evidence that indicates Navy or Coast Guard ships transported tactical herbicides from the United States to the Republic of Vietnam or that ships operating off the coast of Vietnam used, stored, tested, or transported tactical herbicides. Additionally, the JSRRC cannot document or verify that a shipboard veteran was exposed to tactical herbicides based on contact with aircraft that flew over Vietnam or equipment that was used

in Vietnam.

3. Therefore, the JSRRC can provide no evidence to support a veteran's claim of exposure to tactical herbicide agents while serving aboard a Navy or Coast Guard ship during the Vietnam Era.

/s/

Domenic A. Baldini
Director

Appendix 4 – List of Army Post Office (APO) Numbers for Assisting with Verification of RVN Service

For a complete list of the FPO-APO addresses, visit:

<http://vbaw.vba.va.gov/bl/21/rating/stressor/general/GENERAL%201942-2002%20APO-FPO%20Files.pdf>

or do the following:

- From the C&P Service Intranet Home Page, click on “Stressor Verification Site” which is located under the Rating Job Aids section
- On the “Stressor Verification - General Information” page, click on [“General 1942-2002 APO-FPO Files”](#)
- After clicking on the link, the PDF will load all of the FPO-APO files. The listing of APO’s begins on page 4998

The following Vietnam Era Asian Pacific Theater APO numbers have been provided by the Military Postal Service Agency. These include APO numbers used for delivering mail to the Republic of Vietnam. Each number is associated with a location and date range of use (the designation “CO” represents the number’s close out date). If the APO number found in the Veteran’s records corresponds with a number on the list associated with a military installation in Vietnam during the Veteran’s period of service there, it is verification of Vietnam service.

A hospital or medical treatment report with one of the approved APO codes indicates that the Veteran was seen or treated in an RVN.

96201 — AF Tan Son Nhut Afd., Saigon, Viet Nam CO	11-15-66 3-13-73	96212 Replaced APO 612 Taegu, Korea	1-1-65	96223 Phu Bai, Viet Nam Long Binh CO	1-26-68 10-21-68 11-19-69
96202 Replaced APO 2 Chongong-ni, Korea CO	1-1-65 7-20-71	96213 — AF Taegu Aux. AS, Korea	2-28-68	96224 Replaced APO 24 Munsan-ni, Korea Tongduchon-ni	1-1-65 3- -71
96203 — AF Monkey Mountain, Quang Nam, Viet Nam CO	11-10-66 3-6-73	96214 — AF Nha Be, Viet Nam CO	11-1-66 5-11-68	96225 Replaced APO 25 Schofield Barracks, Oahu, Hawaii Cu Chi, Viet Nam CO	1-1-65 3- -66 4-20-71
96204 — AF; Army (1-21-69) Dalat, Viet Nam CO	11-10-66 10-1-72	96214 Puunene, Maui, Hawaii CO	6-20-72 ?	96225 Schofield Barracks, Oahu, Hawaii CO	7-16-73 9-3-77
96204 Yongsan, Korea CO	8-22-80 10-15-82	96215 — AF; Army (4-6-66) Replaced APO 15 Can Tho, Viet Nam CO	1-1-65 9- -73	96226 Phu Tai Valley, Bin Dinh, Viet Nam CO	10-1-68 4-25-72
96205 — AF Nha Trang Afd., Viet Nam CO	12-1-66 3-28-73	96216 Tay Ninh, Viet Nam CO	4-11-67 2-28-71	96227 — AF Replaced APO 27 Bien Hoa AB, Viet Nam CO	1-1-65 3-14-73
96206 Replaced APO 6 Camp Kaiser, Korea Co	1-1-65 3-4-71	96217 Duc Phu, Viet Nam CO	12-28-67 12-28-71	96228 Bear Cat, Viet Nam Chu Lai Phu Bai Bien Hoa Tan Son Nhut AB CO	2-15-68 2-17-68 3-11-68 9-25-68 10-28-68 12-10-69
96206 Yongsan, Korea CO	8-22-80 10-15-82	96218 Replaced APO 18 Taegu, Korea	1-1-65	96229 Kanchanaburi, Thailand Co	1-19-68 3-2-70
96207 Replaced APO 7 Tongduchon-ni, Korea CO	1-1-65 3-4-71	96219 Chu Lai, Viet Nam CO	10-17-67 4-7-71	96230 — AF Da Nang AB (west), Viet Nam CO	11-1-71 11-30-71
96208 Replaced APO 8 Chunchon, Korea	1-1-65	96220 Replaced APO 20 Puppyong, Korea Chejo-do	1-1-65 9-4-73	96230 — AF Kadena AB, Okinawa, Ryukyus	5-5-72
96209 — AF Replaced APO 9 RAAF Laverton, Victoria, Australia Avalon Canberra RAAF Richmond, NSW Sydney	1-1-65 10-21-65 12-16-65 before 7- -70 3-1-72	96221 Phuoc Vinh, Viet Nam Phan Thiet CO	12-31-67 5-10-71 10-1-72	96231 Replaced APO 31 Taejon, Korea	1-1-65
96210 — AF Misawa Security Complex, Misawa AB, Japan	8-1-67	96221 — AF Yokota AB, Japan CO	10-22-75 9-12-80	96232 Replaced APO 32 Camp Charn Sinthope, Thailand Sattahip CO	1-1-65 3-1-66 2-14-76
96211 — AF Suwon AB, Korea CO	1-30-68 ?	96222 — AF; Army (3-16-69) Cholon, Saigon, Viet Nam Tan Son Nhut AB CO	11-1-66 2-13-68 3-28-73	96233 Replaced APO 33	

Korat, Thailand CO	1-1-65 6-30-74	96244 — AF Tachikawa AB, Japan Yokota AB	10-25-74 -80	96260 — AF; Army (4-8-66) Replaced APO 60 Quang Ngai, Viet Nam CO	1-1-65 2-10-73
96234 — AF Bien Hoa AB, Viet Nam Tan Son Nhut AB CO	12-10-71 3-1-72 5-2-75	96245 — AF Ko Kha AS, Thailand CO	5-10-71 5-12-76	96261 Lopburi, Thailand CO	10-1-66 3-31-74
96235 — AF Replaced APO 235 Naha AB, Okinawa, Ryukyus	1-1-65	96248 Replaced APO 48 Machinato, Okinawa, Ryukyus Makiminato	1-1-65 ?	96262 Saigon, Viet Nam Pleiku Camp Redcliff, An Khe CO	? 8-6-66 3-1-70 12-15-70
96236 — AF Duong Dong, Viet Nam CO	7-13-67 1-6-69	96249 Replaced APO 49 Sukiran, Okinawa, Ryukyus CO	1-1-65 8-31-71	96263 — AF Replaced APO 63 Taipei, Taiwan CO	1-1-65 4-20-79
96236 Tainan, Taiwan CO	11-1-71 10-20-76	96250 Replaced APO 50 Sukiran, Okinawa, Ryukyus Bien Hoa, Viet Nam An Khe Bong Son CO	1-1-65 5-5-65 10-18-67 10-8-69 8-17-71	96264 — AF Replaced APO 64 Kunsan AB, Korea	1-1-65
96237 — Army; AF (11-15-66) Replaced APO 37 Udon Afd., Thailand CO	1-1-65 1-26-76	96251 Replaced APO 51 McDonald Barracks, Korea Yong-Tae-ri	1-1-65 5- -71	96265 Tuy Hoa, Viet Nam Pleiku CO	9-10-66 4-10-67 12-15-70
96238 Replaced APO 38 Qui Nhon, Viet Nam CO	1-1-65 4-25-72	96253 — AF Udon RTAFB, Thailand CO	1-27-76 2-20-76	96266 Long Binh, Viet Nam CO	6-1-66 3-28-73
96239 — AF Replaced APO 239 Kadena AB, Okinawa, Ryukyus	1-1-65	96256 Tay Ninh, Viet Nam Chu Lai Moc Bai, Quang Tin Prov. (LZ Baldy) Da Nang CO	8-1-66 4-16-67 5-1-69 6-7-71 6-22-72	96267 Replaced APO 67 Asaka, Japan CO	1-1-65 5-2-75
96240 — AF; Army (3-28-66) Replaced APO 40 Nha Trang, Viet Nam CO	1-1-65 9- -73	96257 Xuan Loc (Long Giow), Viet Nam Bien Hoa Di An Long Binh Pho Loi CO	7-8-66 9-26-69 4-5-70 5- -71 12-7-71 12-28-72	96268 Ban Me Thuot, Viet Nam Bear Cat Dau Tieng CO	? 10-10-66 7-14-67 10-1-72
96241 — AF Udon RTAFB, Thailand CO	after 7- -70 6-25-75	96258 — AF; Army (4-6-66) Replaced APO 158 Hue, Viet Nam CO	1-1-65 2-10-73	96269 Dong Ha, Viet Nam CO	11-5-66 4-16-72
96242 — AF Udon RTAFB, Thailand CO	3-1-74 1-26-76	96259 Replaced APO 59 Pusan, Korea	1-1-65	96270 — AF Replaced APO 70 Wakkanai AS, Hokkaido, Japan CO	1-1-65 6-9-72
96243 — AF; Army (3-13-69) Replaced APO 143 Saigon, Viet Nam Tan Son Nhut AB CO	1-1-65 9-4-73 5-2-75	96270 — AF Yokota AB, Japan	?	96271 Replaced APO 71 Pyongtaek, Korea	1-1-65
Box DAC Dacca, Pakistan Box ND New Delhi, India Box CAM Phnom Penh, Cambodia Box L Vientiane, Laos Box C Calcutta, India					
96244 — AF Khao Khieo RTAFS, Thailand CO	9-8-68 3-31-71				

96272 — AF Replaced APO 72 Chieng Mai Aprt., Thailand CO	1-1-65 7-8-76	96284 — AF Nandi Airport, Fiji CO	8-20-66 12-11-71	96295 — AF Replaced APO 95 Pleiku Aprt., Viet Nam CO	1-1-65 4-18-72
96273 — AF Replaced APO 73 Takhli AB, Thailand CO	1-1-65 1-31-72	96285 — AF Miyako-Jima, Ryukyus CO	10-1-66 8-15-67	96296 — AF; Army (4-6-66) Soc Trang, Viet Nam CO	1-1-65 10-1-72
96274 — AF Replaced APO 74 Clark AB, Luzon, Philippines	1-1-65	96285 — AF Kashiwa, Japan CO	9-5-73 3-25-76	96297 — AF; Army (3-30-66) Replaced APO 97 Ban Me Thuot, Viet Nam CO	1-1-65 3-15-73
96275 — AF Replaced APO 75 Kahului, Maui, Hawaii CO	1-1-65 7-31-71	96286 — AF Kume-Jima, Ryukyus CO	10-1-66 8-15-67	96298 — AF Replaced APO 98 John Hay AB, Baguio, Philippines	1-1-65
96276 — AF Replaced APO 76 Kimpo AB, Korea	1-1-65	96286 — AF Clark AB, Philippines	after 7- -70	96299 — AF Replaced APO 99 Grant Heights, Tokyo, Japan CO	1-1-65 9-21-73
96277 — AF Replaced APO 77 Wallace AS, San Fernando La Union, Philippines	1-1-65	96287 — AF Okino-erabu Shima, Japan CO	10-1-66 8-15-67	96301 Replaced APO 301 Yongsan, Korea	1-1-65
96278 Pleiku, Viet Nam CO	7-16-66 12-15-70	96287 — AF Woomera, Australia	8-24-70	96302 Replaced APO 102 Yongsan, Korea	1-1-65
96279 Long Binh, Viet Nam CO	12-1-66 2-15-71	96288 — AF Korat AB, Thailand CO	8-1-66 2-26-76	96303 — AF Replaced APO 103 Don Muang AB, Bangkok, Thailand CO	1-1-65 5-21-76
96280 — AF Taipei AS, Taiwan CO	2-7-66 3-1-76	96289 Saigon (Di An), Viet Nam CO	3-4-66 4-15-72	96304 — AF Replaced APO 104 Ubon RTAFB, Thailand CO	1-1-65 11-1-74
96281 Army; AF (2-24-71) Replaced APO 181 Chitose AB, Hokkaido, Japan CO	1-1-65 6-18-75	96290 — AF Replaced APO 90 Kaohsiung, Taiwan CO	1-1-65 4-20-79	96305 — AF Replaced APO 105 Johnston Island	1-1-65
96282 — AF Khon Kaen City, Thailand CO	3-10-66 11-15-66	96291 — AF; Army (4-6-66) Replaced APO 91 Vung Tau, Viet Nam CO	1-1-65 3-25-73	96306 — AF; Army (10-17-68) Replaced APO 306 Rangoon, Burma CO	1-1-65 6-30-71
96282 — AF Nam Phong Khon Kaen City, Thailand CO	5-16-67 4-27-70	96292 — AF Replaced APO 92 Onna Point, Okinawa, Ryukyus CO	1-1-65 5-19-71	96307 — AF Replaced APO 307 Tan Son Nhut AB, Viet Nam CO	1-1-65 3-13-73
96282 — AF Taipei, Taiwan CO	7-1-74 4-20-79	96292 — AF Yokota AB, Japan	?	96308 — AF; Army (4-6-66) Phu Bai Airport, Viet Nam CO	3-25-65 2-10-73
96283 — AF Kadena AB, Okinawa, Ryukyus CO	3-10-66 3-25-66	96293 — AF Replaced APO 93 Taichung, Taiwan CO	1-1-65 6-30-75		
		96294 An Khe, Viet Nam Cheo Reo CO	3-4-66 7-25-72 10-1-72		

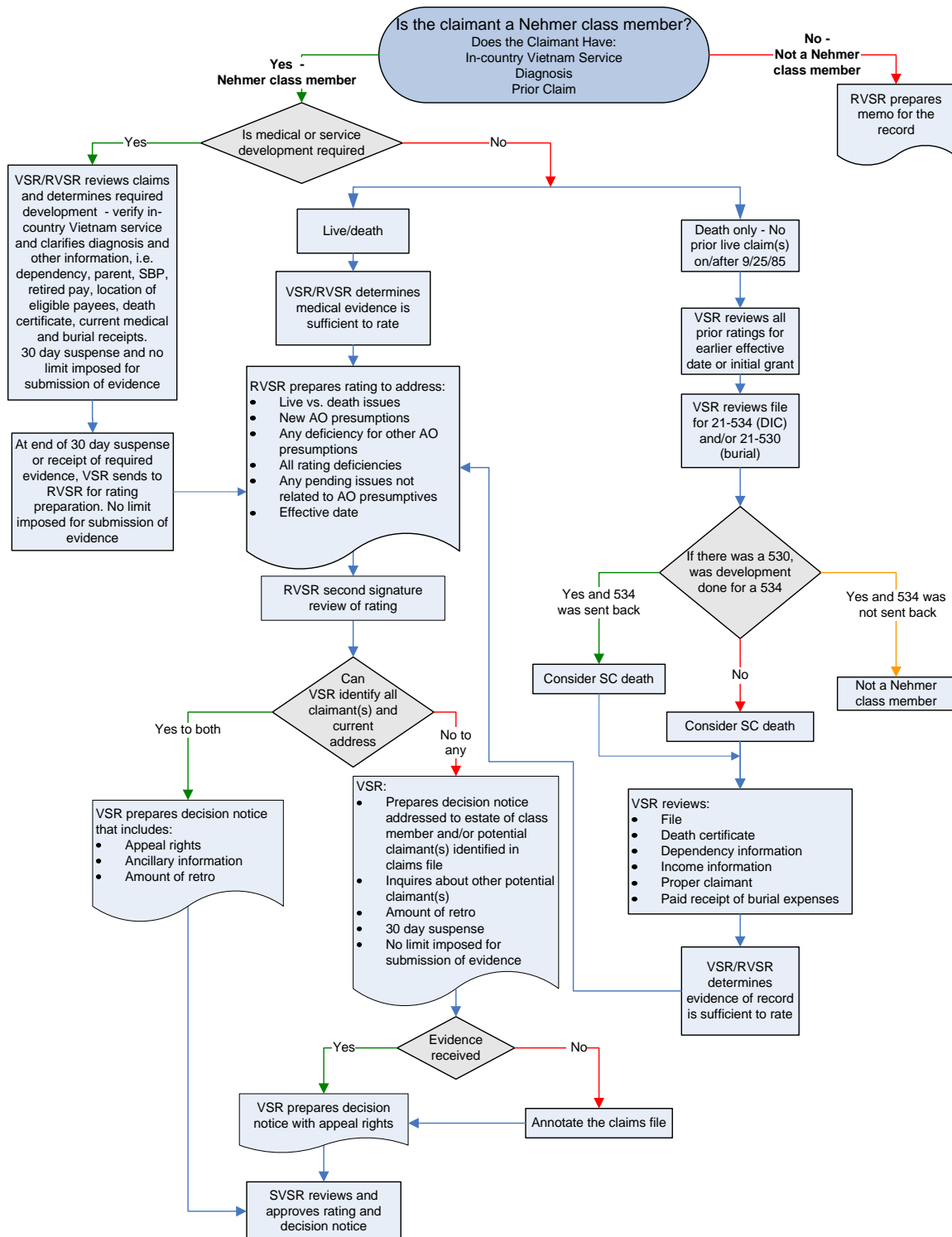
96309 — AF; Army (3-16-69) Cholon, Viet Nam Tan Son Nhut CO	5-1-65 2- -68 3-28-73	CO	4-15-79	Sukiran, Okinawa, Ryukyus Makiminato	1-1-65 9- -75
96310 — AF Replaced APO 310 Nakhon Phanom, Thailand CO	1-1-65 10-26-75	96320 — AF; Army (12-15-71) Binh Thuy AB, Viet Nam CO	8-9-65 4-16-72	96332 — AF; Army (10-10-68) Camp Davies, Saigon, Viet Nam Long Binh CO	10-15-67 10-10-68 10-25-72
96311 Mactan Island Air Field, Cebu, Philippines CO	5-1-65 11-30-69	96321 — AF Phan Rang AB, Viet Nam CO	8-20-65 3-25-72	96333 — AF Eniwetok, Marshall Is.	2-16-65
96311 — AF Clark AB, Philippines	10-18-73	96322 — AF Tan Son Nhut Afd., Viet Nam CO	10-1-65 6-15-69	96334 — AF Replaced APO 334 Andersen AFB, Guam, Mariana Is.	1-1-65
96312 — AF; Army (3-20-66) Cam Ranh Bay, Viet Nam CO	5-1-65 6-21-72	96322 — AF Don Muang Airport, Bangkok, Thailand CO	7-1-72 7-8-76	96335 Replaced APO 135 Inchon, Korea Camp Coirer, Yongsan	1-1-65 2-11-74
96313 — AF RNZAF Station, Woodbourne, Blenheim, New Zealand CO	3-5-65 5-10-73	96323 — AF Replaced APO 323 Tachikawa AB, Japan CO	1-1-65 8-30-77	96336 — AF Replaced APO 136 Tokyo, Japan	1-1-65
96314 — AF Replaced APO 314 Tan Son Nhut Air Field, Viet Nam (Opened to serve advisory teams and similar units in remote areas without postal facilities.) CO	1-1-65 4-20-72	96324 — AF Replaced APO 100 Tachikawa AB, Japan CO	1-1-65 4-30-65	96337 — AF Replaced APO 137 Da Nang Aprt., Viet Nam CO	1-1-65 3-9-73
96315 — AF Replaced APO 315 USCG LORAN Station, Marcus Island CO	1-1-65 11-30-68	96324 — AF Kwanju Aux. Air Station, Korea	3-1-68	96338 Kobe, Japan CO	2-15-65 2-15-75
96315 — AF Don Muang Airport, Bangkok, Thailand CO	6-1-72 6-21-80	96325 — AF; Army (7-20-67) Chu Lai, Viet Nam CO	10-1-65 12-28-71	96339 Bang Pla, Thailand CO	6-10-68 1-7-72
96316 — AF; Army (11-1-70) Tuy Hoa AB, Viet Nam CO	5-1-65 2-22-72	96326 — AF Cam Ranh Bay AB, Viet Nam CO	10-29-65 5-17-72	96340 — AF Replaced APO 140 Tainan AB, Taiwan CO	1-1-65 4-15-79
96317 — AF; Army (4-1-67) Phan Thiet, Viet Nam Da Nang CO	5-1-65 12-27-70 4-27-72	96327 — AF Phu Quoc I., Viet Nam CO	11-5-65 3-1-67	96341 Kilauea Mil. Camp Hawaii Nat. Park, Hawaii CO	2-7-69 9-3-77
96318 — AF; Army (3-25-66) Camp Holloway, Pleiku, Viet Nam Camp Schmidt, Pleiku CO	5-1-65 6-7-71 3-28-73	96327 — AF Bikini Atoll, Marshall Is. CO	3-20-69 10-14-69	96342 — AF Replaced APO 142 Chai-yi, Taiwan CO	1-1-65 6-1-70
96319 — AF Kung Kuan AB, Taiwan Chin Chuan Kang AB	6-11-65 after 7- -70	96328 — AF Replaced APO 328 Yokota AB, Japan	1-1-65	96343 Replaced APO 343 Zama, Japan	1-1-65
		96330 — AF Sattahip AB, Thailand U-Tapao Afd. CO	9-9-65 before 7- -70 7-8-76	96344 Camp Oji, Tokyo, Japan CO	10-12-66 1-20-70
		96331 Replaced APO 331			

96344 Makiminato, Okinawa, Ryukyus Sukiran	10-15-74 -79	96355 Pleiku, Viet Nam Duc Pho LZ Baldy LZ English, Bong Son Pleiku CO	1-1-66 8-1-67 1-28-68 3-2-68 3-30-68 12-15-70	96366 — AF Osan AB, Korea	?
96345 Qui Nhon, Viet Nam Bien Hoa Saigon CO	7-1-65 7-27-65 11-12-65 4-2-70	96356 — AF Replaced APO 156 Djakarta, Indonesia	1-1-65	96367 — AF Mukdahan, Thailand CO	5-1-66 12-31-69
96346 — AF Replaced APO 146 Bangkok, Thailand	1-1-65	96357 — AF; Army (4-6-66) Replaced APO 157 Vinh Long, Viet Nam CO	1-1-65 10-1-72	96367 — AF Kadena AB, Okinawa, Ryukyus	5-15-74
96347 Bien Hoa or Cam Ranh Bay, V.N. An Khe Phan Rang Bien Hoa Long Binh CO	7-8-65 8-1-65 11-14-65 6- -68 9-15-68 3-28-73	96358 Replaced APO 358 Uijong-bu, Korea	1-1-65	96368 — AF Phu Cat AB, Binh Dinh, Viet Nam Cam Ranh AB Tan Son Nhut CO	7-11-66 after 7- -70 3-1-72 3-15-73
96348 — AF Replaced APO 148 Komaki AB, Japan CO	1-1-65 3-31-65	96359 My Tho, Viet Nam CO	1-5-66 10-1-72	96369 — AF Clark AB, Philippines CO	3-10-66 3-25-66
96348 — AF; Army (3-1-72) Tan Son Nhut AB, Viet Nam Long Binh CO	9-20-67 3-1-72 2-20-73	96360 — AF Replaced APO 160 Shu Lin Kou AS, Taiwan CO	1-1-65 3-25-77	96369 — AF Alice Springs, Australia	4-10-68
96349 Sukiran, Okinawa, Ryukyus Da Nang, Viet Nam CO	2-11-66 5-1-68 3-28-73	96361 — AF Tan Son Nhut AB, Viet Nam CO	10-25-67 10-29-70	96370 Bear Cat, Viet Nam Dong Tam Schofield Bks., Oahu, Hawaii CO	10-1-66 7-27-68 8-19-69 2-9-70
96350 Nha Trang, Viet Nam CO	10-25-66 4-5-72	96361 — AF Tachikawa AB, Japan Yokota AB	7-1-74 ?	96370 Kwang-chon (Reno Hill), Korea CO	7-16-73 12-29-81
96351 — AF Replaced APO 151 Pingtung, Taiwan CO	1-1-65 3-27-69	96362 — AF Dong Ha, Viet Nam CO	2-15-66 10-31-69	96371 Phu My, Viet Nam Bear Cat Dong Tam Tan An CO	12-20-66 1-15-67 7-27-68 8- -69 10-5-70
96351 — AF Andersen AFB, Guam, Marianas	?	96362 — AF Ca Mau, Viet Nam CO	4-1-66 10-1-72	96371 Kimp'o, Korea	7-8-74
96352 — AF Replaced APO 152 Bangkok, Thailand Udon CO	1-1-65 6-28-73 7-10-75	96363 — AF; Army (8-20-66) Ca Mau, Viet Nam CO	4-1-66 10-1-72	96372 Phu My, Viet Nam Bear Cat Dong Tam CO	1-15-67 4-19-67 7-27-68 8-18-69
96353 Cu Chi, Viet Nam CO	1-15-66 12-13-70	96364 — AF Camp Kinser, Okinawa, Ryukyus CO	4-10-66 5-31-67	96372 Phu My, Viet Nam Bear Cat Dong Tam Schofield Barracks, Oahu, Hawaii CO	12-8-66 7-27-68 8-18-69 2-9-70
96354 Replaced APO 354 Tokorozawa, Japan CO	1-1-65 1-15-71	96364 — AF Clark AB, Philippines CO	6-1-72 7-8-76	96374 Saigon, Viet Nam Chu Lai CO	4-15-67 4-23-67 1-26-72
		96365 — AF Pago Pago, American Samoa CO	5-10-66 9-5-74	96375 Long Binh, Viet Nam CO	7-1-67 3-28-73
		96366 — AF Phitsanulok, Thailand CO	5-1-66 6-30-70		

96376 Xuan Loc, Viet Nam CO	2-20-67 2-15-72	96395 Quang Tri, Viet Nam CO	8-9-71 3-30-72	96430 — AF Takhli RTAFB, Thailand CO	5-5-7 8-24-7
96377 Cam Ranh Bay, Viet Nam CO	12-1-66 4-30-72	96397 Wongju, Kangwon-Do, Korea	9-1-70	96431 — AF Clark AB, Philippines	8-18-7
96379 Cam Ranh Bay, Viet Nam CO	5-23-67 4-30-72	96398 Di An, Viet Nam Phu Loi CO	11-15-70 2-26-71 10-31-72	96432 — AF Clark AB, Philippines	8-15-7
96381 Saigon, Viet Nam Long Binh CO	12-21-66 9-26-68 3-28-73	96399 Saigon, Viet Nam CO	10-26-70 3-28-73	96434 — AF Clark AB, Philippines	5-1-7
96383 Classified Bien Hoa AB (Camp Eagle), V.N. Phu Bai CO	12-18-67 before 7- -70 3-9-72	96401 — AF Canton Island (Serving military personnel and activities at Santiago, Chile.) CO	12-4-70 7-11-79	96435 — AF Sung Shan Airport, Taipei, Taiwan CO	7-1-7 4-20-7
96384 Long Binh, Viet Nam Tan Son Nhut AB CO	1-7-67 10-21-72 3-13-73	96402 — AF; Army (4-6-66) Replaced APO 300 Bac Lieu, Viet Nam CO	1-1-65 10-1-72	96436 — AF Cheju-Do, Korea CO	2-1-7 6-28-7
96385 Tay Ninh, Viet Nam CO	11-15-67 12-31-70	96403 — AF RAAF Base Amberly, Australia CO	3-1-72 9-3-74	96437 — AF Kangnung, Korea CO	2-1-71 11-15-7
96386 Ramsoom Station, 7 RRFS, Nong Song, Thailand Ramasun CO	2-15-68 10-2-72 6-15-76	96404 — AF Canberra, Australia	3-1-72	96438 Replaced APO 438 Moanalua, Oahu, Hawaii CO	1-1-6 9-3-7
96388 Saigon, Viet Nam Tan Son Nhut AB CO	3-25-67 10-21-72 3-28-73	96405 — AF Melbourne, Australia	3-1-72	96442 — AF Bangkok, Thailand CO	5-1-7 2-1-7
96389 Panom, Thailand CO	1-31-67 3-2-70	96409 — AF Bangkok, Thailand CO	12-1-72 6-27-75	96445 — AF Replaced APO 455 Paengnyong-Do, Korea Chinchon-ni LSN Annex Osan AB	1-1-6 6-28-71 4-1-7
96390 Replaced APO 900 Tokyo, Japan CO	1-1-65 12-31-75	96411 — AF Tachikawa AB, Japan Honolulu, Oahu, Hawaii CO	2-15-72 7-1-74 7-26-75	96460 Replaced APO 460 Waegwan, Korea	1-1-6
96392 North Cam Ranh Bay, Viet Nam CO	-70 ?	96415 — AF Replaced APO 815 Iwo Jima CO	1-1-65 11-25-68	96461 Suwon, Korea	7-15-81
96393 Saigon, Viet Nam CO	3-1-73 5-2-75	96415 Timaru, New Zealand CO	9-3-73 10-25-75	96468 — AF Bangkok, Thailand	2-15-66
		96421 — AF Bangkok, Thailand CO	4-25-69 2-23-77	96477 Quang Tri, Viet Nam CO	7-15-68 8-15-71
				96483 Kimpo AB, Korea Bupyeong	9-15-71 -80

96485		CO	4-30-74	Schofield Barracks, Oahu, Hawaii	1-1-65
Phu Cat, Viet Nam	1-1-72			CO	9-3-77
Qui Nhon	5- -72				
CO	3-20-73				
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96488				96558	
Inchon, Korea	7-15-72	96503	1-1-65	Replaced APO 958	1-1-65
Bupyeong	-81	Replaced APO 503	10-15-74	Ft. Shafter, Oahu, Hawaii	9-3-77
		Yokohama, Japan		CO	
		Camp Zama			
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96489		96504		96570 -- AF	
Camp Ruam Chit Chai, Sakon Nakhon,		Replaced APO 660	1-1-65	Replaced APO 970	1-1-65
Thailand	6-3-68	Yokohama, Japan	7-1-75	Osan AB, Korea	
CO	1-15-71	CO			
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96490 -- 1st Cavalry Div. (Airmobile)		96515 -- AF		96571	
An Khe, Viet Nam	9-30-65	Replaced APO 915	1-1-65	Replaced APO 971	1-1-65
Phu Bai	2-1-68	Wheeler AFB, Oahu, Hawaii	9-3-77	Inchon, Korea	7-27-71
Camp Evans, Phuoc Vinh	10-1-68	CO		Kimpo AB	7-1-74
Bien Hoa	7-12-69			Pyongtaek	
CO	8-16-72				
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96491		96519 -- AF		96594 -- AF	
Qui Nhon, Viet Nam	10-1-65	Replaced APO 919	1-1-65	Replaced APO 994	1-1-65
Tan Son Nhut AB	3-28-66	Misawa AB, Honshu, Japan		Johnson Family Housing Annex, Honshu,	6-23-73
Long Binh	5-15-66			Japan	
CO	2-23-73			CO	
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96492		96525 -- AF		96599	
Charang Valley, Qui Nhon, V.N.	10-5-68	Replaced APO 925	1-1-65	Long Binh, Viet Nam	7-1-66
CO	4-25-72	Fuchu AS, Japan	3-15-76	An Khe	2-1-68
		CO		CO	7-4-69
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96493		96528 -- AF			
Bao Loc, Viet Nam	11-18-68	Replaced APO 928	1-1-65		
CO	4-15-72	Manila, Philippines			
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96494		96529 -- AF			
Camp Holloway, Pleiku, Viet Nam	6-18-69	Replaced APO 929	1-1-65		
CO	5-1-72	Itazuke AB, Japan	5-16-72		
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96495		96530			
Quang Tri, Viet Nam	5-1-68	Bear Cat, Viet Nam	3-28-68		
CO	after 7- -70	CO	12-2-72		
<hr/>					
96496		96545			
Long Binh, Viet Nam	3-20-68	Replaced APO 145	1-1-65		
CO	3-25-73	Helemano Military Reservation, Oahu,	9-3-77		
		Hawaii			
		CO			
<hr/>					
96499 -- AF; Army (4-6-66)		96553 -- AF			
Replaced APO 299	1-1-65	Replaced APO 953	1-1-65		
Kontum, Viet Nam	10-1-72	Hickam AFB, Oahu, Hawaii	9-3-77		
CO		CO			
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96501 -- AF		96555			
Replaced APO 101	1-1-65	Replaced APO 555	1-1-65		
Wake Island		Kwajalein, Marshall Is.			
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96502 -- AF		96556			
Replaced APO 302	1-1-65	Replaced APO 956	1-1-65		
Hakata Adm. Annex, Kyushu,	6-9-72	Pohakuloa, Hawaii			
Japan					
Fukuoka Int. Airport, Fukuoka		96557			
		Replaced APO 957			

Appendix 5 – Workflow for Processing *Nehmer* Claims



Appendix 6 – Contact Information for Processing *Nehmer* Claims

Compensation and Pension Service	
Method	Contact Information
Mailing Address	Department of Veterans Affairs Compensation & Pension Service (211A) Attn: <i>Nehmer</i> Working Group 810 Vermont Ave NW Washington, DC 20420

Southern Area Office	
Method	Contact Information
E-mail	VAVBANAS/SAREA/NEHMER
Telephone	615-695-4070
Mailing Address	Department of Veterans Affairs Southern Area Office 3322 West End, Suite 408 Nashville, TN 37203

Defense Finance and Accounting Service – SBP ONLY	
Method	Contact Information
Telephone - SBP ONLY	216-522-6393
Separation, severance and retired pay contact information will be provided at a later date.	

Appendix 7 – Example Rating Decisions

The following pages provide example *Nehmer* rating decisions for your reference.

Example Rating Decision for Live Compensation with No Prior Grant

INTRODUCTION

Mr./Ms. [enter full name], your records reflect that you are a Veteran who served in the [enter military branch] from [enter date] to [enter date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA records indicate that you previously filed a claim for [insert name of new presumptive condition] and were subsequently denied. A special review of your claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in your case.

DECISION

1. Service connection for [insert new presumptive condition here] associated with herbicide exposure is granted with a [percentage] percent evaluation, effective [insert date of receipt of the Veteran's initial claim for service connection for this condition].

EVIDENCE

- DD Form 214
- VA Form 21-526, Veteran's Application for Compensation or Pension, received on [insert date]
- Other information that creates a claim (informal, inferred, footnote 1)
- VA examination dated [insert date of exam]
- Other Medical Evidence (private, SSA, treatment reports)
- Service Treatment Records
- Rating decision dated [insert date of rating here], denying service connection for [insert new presumptive condition here]
- Include all information pertinent and related to the presumptive condition(s).

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to

herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection is granted for [insert presumptive diagnosis], for purposes of entitlement to retroactive benefits.

VA has confirmed that you had in-country service in the Republic of Vietnam based on [insert evidence here].

Medical evidence from [hospital, doctor, laboratory results] in the record indicates a diagnosis of [diagnosis] on [date]. [Reason for effective date].

You claimed service connection for [diagnosis] on [insert date of claim]. Service connection for [diagnosis] was denied by a rating decision dated, [insert date of decision] because [diagnosis] was not incurred or aggravated during military service, nor was it present to a degree of 10 percent within one year of your discharge from active duty.

Subsequently, [diagnosis] was added recently to the list of disabilities recognized as being related to herbicide exposure. As such, service connection for [diagnosis] is now granted because it is presumptively related to your military service. The effective date of service connection for [diagnosis] is [insert date of receipt of claim], the date your original claim for service connection for [diagnosis] was received.

[Insert paragraph for rating of the new presumptive condition and include an explanation of the percentage assigned for the condition, as well as the requirements for achieving the next higher percentage level.]

[Include a thorough discussion of relevant medical evidence used to assign the rating, including any secondary conditions.]

Example Rating Decision for Live Compensation with Prior Grant

INTRODUCTION

Mr./Ms. [enter full name], your records reflect that you are a Veteran who served in the [enter military branch] from [enter date] to [enter date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA records indicate that service connection was previously granted for [insert issue/diagnosis] and [insert type of benefits] benefits were paid.

VA records indicate that you previously filed a claim for [insert name of new presumptive condition(s)] and were subsequently denied. A special review of your claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in your case.

DECISION

1. Service connection for [insert presumptive disability] associated with herbicide exposure is granted with a [percentage] percent evaluation, effective [insert date].

EVIDENCE

- DD Form 214
- VA Form 21-526, Veteran's Application for Compensation or Pension, received on [date]
- VA Form XX-XXXX
- Other information that creates a claim (informal, inferred, footnote 1)
- VA examination dated [insert date of exam]
- Other Medical Evidence (private, SSA, treatment reports)
- Service Treatment Records
- Rating decision dated [insert date of rating here], denied service connection for [insert new presumptive condition here]
- Include all information pertinent and related to the presumptive disability(s)

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have

a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in Republic of Vietnam.

1. Service connection for [insert presumptive disability], for purposes of entitlement to retroactive benefits.

VA has confirmed that you had in-country service in the Republic of Vietnam based on [insert evidence here].

Medical evidence from [hospital, doctor, laboratory results] in the record indicates a diagnosis of [insert presumptive disability] on [date].

You claimed service connection for [insert disability] on [insert date of claim]. Service connection for [disability] was established by a rating decision dated, [insert date of decision] because [insert basis for grant].

Subsequently, [insert presumptive disability] was added recently to the list of disabilities recognized as being related to herbicide exposure. As such, service connection is now granted because it is presumptively related to your military service. The effective date of service connection for [insert presumptive disability] is [insert date of receipt of claim], the date your original claim for service connection for [insert presumptive disability] was received.

[Insert paragraph for rating of the new presumptive condition and include an explanation of the percentage assigned for the condition, as well as the requirements for achieving the next higher percentage level.]

Example Rating Decision for Live Compensation Denial

INTRODUCTION

Mr./Ms. [full name], your records reflect that you are a Veteran who served in the [military branch] from [date] to [date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA records indicate that you previously filed a claim for [insert name of new presumptive condition] and were subsequently denied. A special review of your claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in your case.

DECISION

1. Service connection for [insert presumptive disability], for purposes of entitlement to retroactive benefits is not granted.

EVIDENCE

- DD Form 214
- VA Form 21-526, Veteran's Application for Compensation or Pension, received on [insert date received]
- Other information that creates a claim (informal, inferred, footnote 1)
- VA examination dated [insert date of exam]
- Other Medical Evidence (private, SSA, treatment reports)
- Service Treatment Records
- Rating decision dated [insert date of rating here], denying service connection for [insert new presumptive condition here]

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea,

Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection for [insert presumptive disability], for purposes of entitlement to retroactive benefits.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

Medical evidence from [hospital, doctor, laboratory results] in the record indicates a diagnosis of [insert presumptive disability] on [date]. You claimed service connection for [insert presumptive disability] on [insert date of claim]. Service connection for [insert presumptive disability] was denied by a rating decision dated, [insert date of decision] because [insert reason(s) for denial].

The denial of your claim for service connection for [insert presumptive disability] is confirmed, because [insert reason(s) for confirming denial].

[Include an explanation for the denial here]

Example Rating Decision for Service-Connected Death Grant with No Prior Grant

INTRODUCTION

VA's records reflect that [full name] was a Veteran who served in the [military branch] from [date] to [date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA's records indicate that you previously filed a claim for your [DIC claimant's relationship]'s death as a result of [insert presumptive disability] and were subsequently denied. A special review of the Veteran's claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in this case.

DECISION

1. Service connection for the cause of death is granted.
2. Basic eligibility to Dependents' Educational Assistance is established effective [insert date].

EVIDENCE

- DD Form 214
- VA Form 21-534, *Application for Dependency and Indemnity Compensation*, received on [date]
- Death certificate
- Medical Evidence [Medical Evidence may include, but is not limited to 1) diagnosis; 2) date of diagnosis; 3) date of death; 4) cause of death; and autopsy report.]

***Note to RVSR:** Always verify that the Veteran filed no claim during his/her lifetime. Also verify whether a 21-530, Application for Burial Benefits has been submitted.

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne,

non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection for the cause of the Veteran's death, for purposes of entitlement to retroactive benefits.

VA has confirmed that the Veteran had in-country service in the Republic of Vietnam based on [insert evidence here].

During the lifetime of the Veteran, [he/she] did not submit a claim for benefits based on [insert presumptive disability].

On [date] a claim for service connected death benefits as a result of the Veteran's death was received. On [date], this claim was denied because, at that time, [insert presumptive disability] was not found to have been incurred or aggravated during military service, nor was it present to a degree of 10 percent within one year of the Veteran's discharge from active duty.

On [date] the Veteran died and the cause of death was recorded as [cause of death, including contributory causes, if relevant].

Subsequently, [insert presumptive disability] was added recently to the list of disabilities recognized as being related to Agent Orange exposure. As such, service connection for the cause of the Veteran's death is now granted.

NOTE: [Insert only if a VAF 21-530 is not in file-Please send VA Form 21-530, Application for Burial Benefits to surviving spouse.]

2. Eligibility for Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a Veteran who has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the Veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Basic eligibility to Dependents' Education Assistance is granted and is effective from [insert date], because the Veteran's death is presumptively related to military service.

[Insert the reasons for the effective date here]

Example Rating Decision for Service-Connected Death Grant with Prior Pension Grant

INTRODUCTION

VA's records reflect that [full name] was a Veteran who served in the [military branch] from [date] to [date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA's records indicate that there was a claim previously filed for your [DIC claimant's relationship]'s death as a result of [insert name of new presumptive condition]. A special review of the Veteran's claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in this case.

DECISION

1. Service connection for the cause of death is granted.
2. Basic eligibility to Dependents' Educational Assistance is established.

EVIDENCE

- DD Form 214
- VA Form 21-534, Application for Dependency and Indemnity Compensation (DIC), received on [insert date 534 received]
- Death certificate
- Medical Evidence [Medical Evidence may include, but is not limited to 1) diagnosis; 2) date of diagnosis; 3) date of death; 4) cause of death; and autopsy report.]

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL

amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection for the cause of the Veteran's death, for purposes of entitlement to retroactive benefits.

VA has confirmed that the Veteran had in-country service in the Republic of Vietnam based on [insert evidence here].

On [insert date VA Form 21-534 received] you filed a claim for non service-connected pension benefits. Medical evidence in the record indicates a diagnosis of [insert presumptive disability] on [insert date of diagnosis]. On [date] the Veteran died and the cause of death was recorded as [cause of death, including contributory causes, if relevant].

On [date], we granted non service-connected pension benefits, effective [insert effective date].

Subsequently, [insert presumptive disability] was added recently to the list of disabilities recognized as being related to Agent Orange exposure. As such, service connection for cause of death is now granted.

2. Eligibility for Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a Veteran who has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the Veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Basic eligibility to Dependents' Education Assistance is granted and is effective from [date].

Example Rating Decision for Service-Connected Death Confirmed and Continued

INTRODUCTION

VA's records reflect that [full name] was a Veteran who served in the [military branch] from [date] to [date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA's records indicate that you previously filed a claim for your [DIC claimant's relationship]'s death as a result of [insert name of new presumptive condition] and were subsequently denied. A special review of the Veteran's claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in this case.

DECISION

1. The prior decision regarding service connection for cause of death is confirmed and no change is warranted for that prior denial under the provisions of the court's orders in *Nehmer*.

EVIDENCE

- DD Form 214
- VA Form 21-534, Application for Dependency and Indemnity Compensation, received on [date]
- VA Form 21-530, Application for Burial Benefits was received on [insert date]
- Death certificate
- Medical Evidence [Medical Evidence may include, but is not limited to 1) diagnosis; 2) date of diagnosis; 3) date of death; 4) cause of death; and autopsy report.]
- Decision dated [insert date of decision] denied service connection for cause of death

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has

determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection for the cause of the Veteran's death, for purposes of entitlement to retroactive benefits.

VA has confirmed that the Veteran had in-country service in the Republic of Vietnam based on [insert evidence here].

During the lifetime of your [DIC claimant's relationship-husband, son, spouse, father, etc], [he/she] did not submit a claim for benefits based on [insert disability shown as cause of death].

On [date] a claim for service connected death benefits as a result of his/her death was received. The date of death is [insert date] and the cause of death was recorded as [cause of death, including contributory causes, if relevant]. A rating dated [insert date], denied your DIC claim.

The denial of your claim for service-connected death is confirmed and no change is warranted under the provisions of the court's orders in *Nehmer*.

Example Rating Decision for Service-Connected Death Grant and Retroactive Compensation

INTRODUCTION

VA's records reflect that [insert full name of Veteran] was a Veteran who served in the [insert name of military branch in which Veteran served] from [insert date service began] to [insert date of discharge]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA's records indicate that your [insert DIC claimant's relationship, i.e.- husband, father, etc] previously filed a claim for [insert name of new presumptive disability] and was subsequently denied. A special review of your [survivor's relationship]'s claims file was mandated by federal court order in *Nehmer v. Department of Veterans Administration*. Based on our review of the evidence listed below, we have made the following decision(s) in this case.

DECISION

1. Service connection for [insert presumptive disability] associated with herbicide exposure is granted with a [insert percentage] percent evaluation, effective [insert date of receipt of the Veteran's initial claim for service connection for this condition].
2. Service connection for the cause of death is granted.
3. Basic eligibility to Dependents' Educational Assistance is established.

EVIDENCE

- DD Form 214
- VA Form 21-526, Veteran's Application for Compensation or Pension, received on [insert date of receipt of the Veteran's original claim for service connection for this condition].
- Other information that creates a claim (informal, inferred, implied or a potential claim)
- VA examination dated [insert date of exam]
- Other Medical Evidence (private, SSA, treatment reports)
- Service Treatment Records
- Decision dated [insert date of decision], denied service connection for [insert presumptive disability]
- VA Form 21-534, Application for Dependency and Indemnity Compensation, received on [insert date claim received]
- Death certificate

- VA Form 21-530, Application for Burial Benefits received on [insert date claim received]
- Decision dated [insert date of rating], denied service connected death for [insert presumptive disability]

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection for [insert presumptive disability], for purposes of entitlement to retroactive benefits.

VA has confirmed that the Veteran had in-country service in the Republic of Vietnam based on [insert evidence here].

Medical evidence in the record indicates a diagnosis of [insert presumptive disability] on [date]. The Veteran claimed service connection for [insert presumptive disability] on [insert date of claim]. Service connection for [insert presumptive disability] was denied by a rating decision dated, [insert date of decision] because [insert presumptive disability] was not incurred or aggravated during military service, nor was it present to a degree of 10 percent within one year of the Veteran's discharge from active duty.

Subsequently, [insert presumptive disability] was added recently to the list of disabilities recognized as being related to herbicide exposure. As such, service connection for [insert presumptive disability] is now granted because it is presumptively related to the Veteran's military service. The effective date of service connection for [insert presumptive disability] is [insert date of receipt of claim], the date the Veteran's original claim for service connection for [insert presumptive disability] was received.

[Insert paragraph for rating of the new presumptive condition and include an explanation of the percentage assigned for the condition, as well as the requirements for achieving the next higher percentage level.]

2. Service connection for the cause of the Veteran's death, for purposes of entitlement to retroactive benefits.

On [date] the Veteran died and the cause of death was recorded as [cause of death, including contributory causes, if relevant]. On [date] a claim for service connected death benefits as a result of the Veteran's death was filed. On [date], this claim was denied because, as was found in the previous denial of the Veteran's claim, [insert presumptive disability] was not found to have been incurred or aggravated during military service, nor was it present to a degree of 10 percent within one year of the Veteran's discharge from active duty.

Subsequently, [insert presumptive disability] was added recently to the list of disabilities recognized as being related to herbicide exposure. As such, service connection for the cause of the Veteran's death is now granted, because it is presumptively related to the Veteran's military service.

3. Eligibility for Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a Veteran who has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the Veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Basic eligibility to Dependents' Education Assistance is granted and is effective from [date].

Appendix 8 – Rating Schedule

For a complete discussion of the cardiovascular evaluation criteria in effect prior to January 12, 1998, as well as a discussion of the old and new side-by-side comparison go directly to:

http://vbaw.vba.va.gov/bl/21/Publicat/Regs/Part4/TUTORIAL/Cv_indx.htm.

Appendix 9 – Example Notification Letters

The following pages provide example *Nehmer* notification letters for your reference.

Example Letter for Live Veteran Service-Connected Grant

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
CSS XXX XX XXXX
XXXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veterans Affairs (VA) recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. Our records indicate that you previously filed a claim for *[insert name of new presumptive condition]*.

We have conducted a special review of your claims file mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*.

This letter tells you about your award amount and payment start date and what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about additional benefits, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Estimated Retroactive Amount

The estimated amount of retroactive benefits is \$*[amount]*. These retroactive benefits are a result of the United States District Court's order in *Nehmer v. U.S. Department of Veterans Affairs*. Please see *Your Award Amount and Payment Start Date*.

Your Award Amount and Payment Start Date

[Use standard PCGL paragraphs and tables. Be sure to include dependency information. Insert all dependent's names.]

You Can Expect Payment

[Use standard PCGL paragraphs]

We Have Withheld Benefits

[Use standard PCGL paragraphs, if applicable]

What We Decided

We granted service connection for *[insert name of new presumptive here]* for the purposes of entitlement to retroactive benefits, effective *[date]*.

[Use standard PCGL paragraphs, if applicable]

Do You Have Dependents?

[Use standard PCGL paragraphs – include VA Form 21-686c and 21-674 for students in attachments]

How Do You Start Direct Deposit?

[Use appropriate PCGL paragraph]

Are You Entitled to Additional Benefits?

[Use standard Additional Benefits PCGL paragraphs, if applicable. Additional benefit paragraphs include insurance, medical care, vocational rehabilitation and employment benefits, commissary, etc.]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraph]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXXX

XXXXXX

[Title]

Enclosure(s): Rating Decision

[Include all Enclosures necessary]

VA Form 4107

Example Letter for Live Veteran Service-Connected Denial

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
CSS XXX XX XXXX
XXXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veterans Affairs (VA) recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. Our records indicate that you previously filed a claim for *[insert name of new presumptive condition]*.

We have conducted a special review of your claims file mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*.

This letter tells you what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

What We Decided

[Use standard PCGL paragraphs]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraphs]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXXX

XXXXXX

[Title]

Enclosure(s): Rating Decision

[Appropriate attachments]

Example Letter for DIC Grant

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
XSS XXX XX XXXX
XXXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veterans Affairs (VA) recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. Our records indicate that [Name of Veteran] previously filed a claim for *[insert name of new presumptive condition]*.

We have conducted a special review of your *[DIC claimant's relationship]*'s claims file mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*.

This letter tells you about your award amount and payment start date and what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about additional benefits, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Estimated Retroactive Amount

The estimated amount of retroactive benefits based on *[Veteran's name]*'s claim for service connected compensation is \$*[amount]*. The estimated amount of DIC retroactive benefits is \$*[amount]*. *[Make necessary adjustments to the paragraph to address the benefit payment]*.

These retroactive benefits are a result of the United States District Court's order in *Nehmer v. U.S. Department of Veterans Affairs*. Please see *Your Award Amount and Payment Start Date*.

Your Award Amount and Payment Start Date

[Use standard PCGL paragraphs and tables. Insert name(s) for additional dependents. Be sure to include dependency information.]

You Can Expect Payment

[Use standard PCGL paragraphs]

We Have Withheld Benefits

[Use standard PCGL paragraphs]

What We Decided

We granted service connection for [insert name of new presumptive here] for the purposes of entitlement to retroactive benefits, effective [date] until [date of death].

[Use all other necessary standard PCGL paragraphs]

How Do You Start Direct Deposit?

[Use standard PCGL paragraphs]

What Additional Information or Evidence Do We Still Need From You?

[Use standard PCGL paragraphs]

When and Where to Send the Information or Evidence

[Use standard PCGL paragraphs]

Are You Entitled to Additional Benefits?

[Use standard PCGL paragraphs]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraphs]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXX

XXXXX

[Title]

Enclosure(s): Rating Decision

[All Necessary Enclosures]

Example Letter for DIC Denial

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
XSS XXX XX XXXX
XXXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veterans Affairs (VA) recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. *[If the Veteran filed a claim insert.]* Our records indicate that *[Name of Veteran]* previously filed a claim for *[insert name of new presumptive condition]*.

Our records indicate that you applied for dependency and indemnity compensation (DIC) benefits on *[date]*.

We have conducted a special review of your *[DIC claimant's relationship]*'s claims file mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*.

Every effort was made in considering your claim. This notification tells you what we decided, how we made our decision and what evidence we used to make our decision. We have also included information on what to do if you disagree with our decision and who to contact if you have questions or need assistance.

What We Decided

[Use standard PCGL paragraphs]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraphs]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXXX

XXXXXX

[Title]

Enclosure(s): Rating Decision
VA Form 4107

Example Letter for Estate Grant

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
XSS XXX XX XXXX
XXXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veteran Affairs (VA) has recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. Our records indicate that *[Name of Veteran]* previously filed a claim for *[insert name of new presumptive condition]* during his lifetime.

We have conducted a special review of the Veteran's claim file as mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*. We have determined that the Veteran's Estate is entitled to retroactive compensation based on being a recognized class member as outlined in the above court order.

This letter tells you about the award amount and payment start date and what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information of what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Estimated Retroactive Amount

The estimated amount of retroactive benefits is \$*[amount]*. This estimated payment was calculated using the new monthly entitlement amount minus any prior payments that were made along with any prior withholdings (if applicable) from the effective date(s) shown in the table below. These retroactive benefits are a result of the United States District Court's order in *Nehmer v. U.S. Department of Veterans Affairs*. Please see the *Award Amount and Payment Start Date*.

Award Amount and Payment Start Date

[Use standard PCGL paragraphs and tables.]

This retroactive payment is being made to the Estate of the Veteran based on being a recognized class member.

You Can Expect Payment

[Use standard PCGL paragraphs]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraphs]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXXX

XXXXXX

[Title]

Enclosure(s): Rating Decision

[Enclosures vary]

VA Form 4107

Example Letter for Child or Parent Grant

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
XSS XXX XX XXXX
XXXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veteran Affairs has recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. Our records indicate *[Name of Veteran]* previously filed a claim for *[insert name of new presumptive condition]* during his lifetime.

We have conducted a special review of the Veteran's claim file as mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*. We have determined that you are entitled to retroactive compensation based on being a recognized class member as outlined in the above court order.

This letter tells you about your award amount and payment start date and what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information of what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Estimated Retroactive Amount

The estimated amount of your retroactive benefits is \$[amount]. This estimated payment was calculated using the new monthly entitlement amount minus any prior payments that were made along with any prior withholdings (if applicable) from the effective date(s) shown in the table below. These retroactive benefits are a result of the United States District Court's order in *Nehmer v. U.S. Department of Veterans Affairs*. Please see *Your Award Amount and Payment Start Date*.

Your Award Amount and Payment Start Date

[Use standard PCGL paragraphs and tables] [Modify for one time only payment]

We're paying you as a recognized class member of the above named Veteran.

You Can Expect Payment

[Use standard PCGL paragraphs]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraphs]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXX

XXXXX

[Title]

Enclosure(s): Rating Decision

[Enclosures vary]

VA Form 4107

Appendix 10 – Memorandums for the Record and Memorandum Notice Letter

The following pages provide the example Memorandum for the Records and the Memorandum Notice Letter for your reference.

Example Memorandum for the Record for No Vietnam Service

NEHMER MEMORANDUM FOR THE RECORD			
Department of Veterans Affairs	POA	Date of Memorandum	
Veteran's Name	Resource Center	VA Employee Name	VA File Number
<p>ISSUE: No Vietnam Service</p> <p>A review of the claims folder showed no evidence of service within the land borders of Vietnam or the inland waterways of Vietnam. Our rating decision dated [date], confirms no Vietnam service. In the absence of any evidence of service in the Republic of Vietnam, or exposure to herbicides used in the Republic of Vietnam during military service, further review under <i>Nehmer</i> is not required.</p> <p>Nevertheless, to ensure that VA is taking all reasonable steps to identify potential <i>Nehmer</i> class members, VA is providing you with an opportunity to submit evidence showing service in the Republic of Vietnam or its inland waterways. If evidence is submitted or becomes available to VA that indicates service in the Republic of Vietnam, then VA will adjudicate whether or not you qualify as a <i>Nehmer</i> class member. If VA determines you are a <i>Nehmer</i> class member, then your eligibility for benefits based on the addition of the above mentioned presumptive conditions will be reconsidered. You have 30 days from the date of this letter to submit evidence documenting service in the Republic of Vietnam or its inland waterways. If you did not have such service, no response is necessary.</p> <p>[User Input - A detailed explanation regarding why the individual is not a class member is required. The explanation must be sufficient in detail for the reviewer to undertake a clear analysis as to why the case does not qualify for <i>Nehmer</i> readjudication.]</p>			
Name (Rating Specialist/DRO)			
Name (Rating Specialist/DRO)			

Example Memorandum for the Record for No Claim

<i>NEHMER</i> MEMORANDUM FOR THE RECORD			
Department of Veterans Affairs	POA	Date of Memorandum	
Veteran's Name	Resource Center	VA Employee Name	VA File Number
<p>ISSUE: No Prior Claim</p> <p>A review of the claims folder showed neither a prior claim for benefits based on one of the three new presumptive conditions nor a prior denial of a claim for benefits based on one of those conditions between September 25, 1985, and August 31, 2010. In the absence of such evidence, further review under <i>Nehmer</i> is not required.</p> <p>Nevertheless, to ensure that VA is taking all reasonable steps to identify potential <i>Nehmer</i> class members, VA is providing you with an opportunity to submit evidence of a previously filed claim or denial of benefits based on one of the above conditions between September 25, 1985, and August 31, 2010. If VA receives evidence that confirms a prior claim or denial of benefits based on one of the three newly established presumptive conditions, then VA will adjudicate whether or not you qualify as a <i>Nehmer</i> class member. If VA determines you are a <i>Nehmer</i> class member, entitlement to benefits based on the addition of the above-mentioned presumptive conditions will be reconsidered. You have 30 days from the date of this letter to submit evidence demonstrating submission of a prior claim for Ischemic Heart Disease, Parkinson's Disease, or B-Cell/Hairy Cell Leukemia. If you did not file such a claim, no response is necessary.</p> <p>[User Input - A detailed explanation regarding why the individual is not a class member is required. The explanation must be sufficient in detail for the reviewer to undertake a clear analysis as to why the case does not qualify for <i>Nehmer</i> readjudication.]</p>			
Name (Rating Specialist/DRO)			
Name (Rating Specialist/DRO)			

Memorandum Notice Letter

Joe Veteran
123 Main Street
Anytown, USA 12345

In Reply Refer To: SECTION ID
CSS XXX XX XXXX
VETERAN, Joe

Dear Mr. Veteran:

In accordance with our letter dated [date], a review of [your/the Veteran's] claims folder has been conducted in accordance with *Nehmer v. U.S. Department of Veterans Affairs* (VA), which requires the payment of retroactive benefits to certain *Nehmer* class members. Pursuant to court orders in the *Nehmer* case, class members are entitled to retroactive benefits in cases in which VA received a claim for benefits based on one or more of the diseases presumptively associated with exposure to certain herbicide agents, or where VA denied benefits on or after September 25, 1985, and before August 31, 2010. As you may be aware, by regulation dated August 31, 2010, VA added Ischemic Heart Disease, Parkinson's Disease, and B-Cell/Hairy Cell Leukemias to the list of diseases presumptively associated with exposure to certain herbicide agents. An initial search conducted by VA in connection with the addition of these three diseases identified this case as a potential *Nehmer* case.

No Vietnam Service Paragraphs (2)

A review of the claims folder showed no evidence of service within the land borders of Vietnam or the inland waterways of Vietnam. Our rating decision dated [date], confirms no Vietnam service. In the absence of any evidence of service in the Republic of Vietnam, or exposure to herbicides used in the Republic of Vietnam during military service, further review under *Nehmer* is not required.

Nevertheless, to ensure that VA is taking all reasonable steps to identify potential *Nehmer* class members, VA is providing you with an opportunity to submit evidence showing service in the Republic of Vietnam or its inland waterways. If evidence is submitted or becomes available to VA that indicates service in the Republic of Vietnam, then VA will adjudicate whether or not you qualify as a *Nehmer* class member. If VA determines you are a *Nehmer* class member, then your eligibility for benefits based on the addition of the above mentioned presumptive conditions will be reconsidered. You have 30 days from the date of this letter to submit evidence documenting service in the Republic of Vietnam or its inland waterways. **If you did not have such service, no response is necessary.**

No Prior Claim Paragraphs (2)

A review of the claims folder showed neither a prior claim for benefits based on one of the three new presumptive conditions nor a prior denial of a claim for benefits based on one of those conditions between September 25, 1985, and August 31, 2010. In the absence of such evidence, further review under *Nehmer* is not required.

Nevertheless, to ensure that VA is taking all reasonable steps to identify potential *Nehmer* class members, VA is providing you with an opportunity to submit evidence of a previously filed claim or denial of benefits based on one of the above conditions between September 25, 1985, and August 31, 2010. If VA receives evidence that confirms a prior claim or denial of benefits based on one of the three newly established presumptive conditions, then VA will adjudicate whether or not you qualify as a *Nehmer* class member. If VA determines you are a *Nehmer* class member, entitlement to benefits based on the addition of the above-mentioned presumptive conditions will be reconsidered. You have 30 days from the date of this letter to submit evidence demonstrating submission of a prior claim for Ischemic Heart Disease, Parkinson's Disease, or B-Cell/Hairy Cell Leukemia. **If you did not file such a claim, no response is necessary.**

If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	Put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter.

In all cases, be sure to refer to your VA file number XXX XX XXXX.

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.va.gov>.

We have no record of your appointment of a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized veterans' service organizations and/or representatives. Veterans' service organizations, which are recognized or approved to provide services to the veteran community, can also help you with any questions.

OR

We sent a copy of this letter to your representative, [POA], whom you can also contact if you have questions or need assistance.

Sincerely yours,

Signature

Name

Veterans Service Center Manager

cc: [POA]

Appendix 11 – The Cardiovascular System in 38 C.F.R § 4.100 (Prior to January 12, 1998)

Sec. 4.100 Necessity for complete diagnosis.

The common types of disease of the heart are those of rheumatic, syphilitic, arteriosclerotic, hypertensive, or hyperthyroid etiology. Determinations of relationship to service and evaluation, in the case of disability due to disease of the heart, require accurate identification of the disease, as an active or residual condition, with the complete required classification of etiology, structural lesions, manifestations, and capacity for work. Many common diagnoses following the first World War do not represent disease entities. "Chronic myocarditis," for example, except as a continuing inflammation following an identified acute myocarditis due to rheumatic fever or other infectious agent, is not a satisfactory diagnosis; there should be further identification of the etiological agent and structural lesions, prior to rating action. The very common diagnosis "mitral insufficiency" is likewise unsatisfactory as reflecting organic valvular disease in the absence of associated mitral stenosis, definite cardiac enlargement without other causes, or history of rheumatic manifestations. An acceptable diagnosis cannot be based upon the presence of systolic murmurs alone. Tachycardia and bradycardia, the various arrhythmias, and cardiac hypertrophy or dilatation, do not represent generally acceptable diagnoses, and elevation or depression of the systolic or diastolic pressure is usually a manifestation of disease, rather than a clinical entity.

Sec. 4.101 Rheumatic heart disease.

Rheumatic fever is an acute infectious disease, affecting the structures about the joints (though without permanent bone damage) and, frequently, the endocardium. Children are as a rule affected, usually before the age of 20 years. Seldom is the initial attack after 25 years. The disease tends to recur, and serious heart trouble may follow the first or a subsequent attack. With acute rheumatic fever in service, perhaps without manifest damage to the heart, a subsequent recurrence of the infection, should be accepted as service connected. With even a few days service, service connection may be given for an acute rheumatic fever and any cardiac residuals. On the other hand, a mitral insufficiency without a history of rheumatic fever, chorea, or tonsillitis, or definite complication in service, must be considered as functional. Aortic insufficiency with a history of rheumatic fever and manifestation within approximately 15 years from the date of syphilitic infection, if any, should generally be considered rheumatic and always so when there is associated mitral or aortic stenosis. With a history of rheumatic fever in service, an aortic insufficiency manifest some years later without other cause shown may be service connected. The subsequent progress of rheumatic heart disease, and the effect of superimposed arteriosclerotic or hypertensive changes cannot usually be satisfactorily disassociated or separated so as to permit differential service connection. It is for

this reason, in part, that great insistence is placed upon ascertainment of the service-connected disease as a true pathological entity. A subsequent change of diagnosis from one of an organic condition to one reflecting the effect of psychic or nervous factors casts doubt on the original diagnosis, but unless the correction is promptly made continuance of the service connection and of the evaluation under the new diagnosis is required. Such a change does not reflect an improvement of the physical condition.

Sec. 4.102 Varicose veins and phlebitis.

With severe varicose veins, tests to determine impairment of deep return circulation are essential, as the superficial varicosities may be caused by the impairment of deep return circulation, or there may be phlebitis as a complication of varicose ulcers. With phlebitis, or impairment of deep return circulation, the appropriate higher rating should be applied.

Sec. 4.103 [Reserved]

Sec. 4.104 Schedule of ratings--cardiovascular system.

Diseases of the Heart	Rating
7000 Rheumatic heart disease:	
As active disease and, with ascertainable cardiac manifestation, for a period of 6 months.....	100
Inactive:	
Definite enlargement of the heart confirmed by roentgenogram and clinically; dyspnea on slight exertion; rales, pretibial pitting at end of day or other definite signs of beginning congestive failure; more than sedentary employment is precluded.....	100
The heart definitely enlarged; severe dyspnea on exertion, elevation of systolic blood pressure, or such arrhythmias as paroxysmal auricular fibrillation or flutter or paroxysmal tachycardia; more than light manual labor is precluded.....	60
From the termination of an established service episode of rheumatic fever, or its subsequent recurrence, with cardiac manifestations, during the episode or recurrence, for 3 years, or diastolic murmur with characteristic EKG manifestations or definitely enlarged heart.....	30
With identifiable valvular lesion, slight, if any dyspnea, the heart not enlarged; following established active rheumatic heart disease.....	10
7001 Endocarditis, bacterial, subacute.	
7002 Pericarditis, bacterial or rheumatic, acute.	

Rate as rheumatic heart disease.	
7003 Adhesions, pericardial:	
Extensive, obliterating the sac, with congestive heart failure	100
Rate lesser conditions as rheumatic heart disease, inactive.	
7004 Syphilitic heart disease:	
Rate as rheumatic heart disease, inactive.	
7005 Arteriosclerotic heart disease:	
During and for 6 months following acute illness from coronary occlusion or thrombosis, with circulatory shock, etc.....	100
After 6 months, with chronic residual findings of congestive heart failure or angina on moderate exertion or more than sedentary employment precluded.....	100
Following typical history of acute coronary occlusion or thrombosis as above, or with history of substantiated repeated anginal attacks, more than light manual labor not feasible.....	60
Following typical coronary occlusion or thrombosis, or with history of substantiated anginal attack, ordinary manual labor feasible.....	30
7006 Myocardium, infarction of, due to thrombosis or embolism.	
Rate as arteriosclerotic heart disease.	
7007 Hypertensive heart disease:	
With definite signs of congestive failure, more than sedentary employment precluded.....	100
With marked enlargement of the heart, confirmed by roentgenogram, or the apex beat beyond midclavicular line, sustained diastolic hypertension, diastolic 120 or more, which may later have been reduced, dyspnea on exertion, more than light manual labor is precluded.....	60
With definite enlargement of the heart, sustained diastolic hypertension of 100 or more, moderate dyspnea on exertion.....	30
7008 Hyperthyroid heart disease:	
With signs of congestive failure.....	100
With permanent or paroxysmal auricular fibrillation.....	60
Note: The ratings under Code 7008 are not to be combined with ratings for hyperthyroidism. Rate lesser conditions as hyperthyroidism.	
Cardiac neurosis.	
Refer to psychiatric schedule.	
Note: The following Codes 7010 through 7015 reflecting arrhythmias and conduction abnormalities are occasionally encountered. Standing alone they represent incomplete diagnoses. Ratings are not to be combined with those for other heart or psychiatric conditions.	
7010 Auricular flutter, paroxysmal.	
Rate as paroxysmal tachycardia.	

7011 Auricular fibrillation, paroxysmal. Rate as paroxysmal tachycardia.	
7012 Auricular fibrillation, permanent.....	10
7013 Tachycardia, paroxysmal:	
Severe, frequent attacks.....	30
Infrequent attacks.....	10
7014 Sinus tachycardia:	
Persistently 100 or more in recumbent position.....	10
7015 Auriculoventricular block:	
Complete; with attacks of syncope necessitating the insertion of a permanent internal pacemaker, and for 1 year, after which period the rating will be on residuals as below.....	100
Complete: with Stokes-Adams attacks several times a year despite the use of medication or management of the heart block by pacemaker.....	60
Complete; without syncope or minimum rating when pacemaker has been inserted.....	30
Incomplete; without syncope but occasionally symptomatic.....	10
Incomplete; asymptomatic, without syncope or need for medicinal control after more than 1 year.....	0
Note 1: Atrioventricular block, partial or complete, may be present associated with and related to the supraventricular tachycardias or pathological bradycardia. Cases with Mobitz Type II block may be encountered, as well as Wenckebach's phenomenon, Mobitz Type I block, and varying degrees of A-V block associated with tachyarrhythmias or other severe disturbances in rate or rhythm. Such unusual cases should be submitted to the Director, Compensation and Pension Service. On the other hand, simple delayed P-R conduction time, in the absence of other evidence of cardiac disease, is not a disability.	
Note 2: The 100 percent rating for 1 year following implantation of permanent pacemaker will commence after initial grant of the 1 month total rating assigned under Sec. 4.30 following hospital discharge.	
7016 Heart valve replacement (prosthesis):	
For 1 year following implantation of prosthetic valve.....	100
Thereafter; rate as rheumatic heart disease; minimum rating.....	30
Note: The 100 percent rating for 1 year following implantation of prosthetic valve will commence after initial grant of the 1 month total rating assigned under Sec. 4.30 following hospital discharge.	
7017 Coronary artery bypass:	
For 1 year following bypass surgery.....	100
Thereafter, rate as arteriosclerotic heart disease. Minimum rating.....	30

Note: Authentic myocardial insufficiency with arteriosclerosis may be substituted for occlusion.

Note: The 100 pct rating for 1 year following bypass surgery will commence after the initial grant of the 1-month total rating assigned under Sec. 4.30 following hospital discharge.

Diseases of the Arteries and Veins

Rating

7100 Arteriosclerosis, general:	
With slight weakening of bodily vigor.....	20
Without symptoms or renal, cardiac, or cerebral complications.	0
Note: Rate the arteriosclerotic complications, such as renal, cardiac, or cerebral, under the appropriate schedule.	
7101 Hypertensive vascular disease (essential arterial hypertension):	
Diastolic pressure predominantly 130 or more and severe symptoms.....	60
Diastolic pressure predominantly 120 or more and moderately severe symptoms.....	40
Diastolic pressure predominantly 110 or more with definite symptoms.....	20
Diastolic pressure predominantly 100 or more.....	10
Note 1: For the 40 percent and 60 percent ratings under code 7101, there should be careful attention to diagnosis and repeated blood pressure readings.	
Note 2: When continuous medication is shown necessary for control of hypertension with a history of diastolic blood pressure predominantly 100 or more, a minimum rating of 10 percent will be assigned.	
7110 Aneurysm, aortic, fusiform, sacular, dissection and/or with stenosis:	
After establishment of diagnosis with markedly disabling symptoms; and for 1 year after surgical correction (with any type graft).....	100
If exertion and exercise is precluded.....	60
Thereafter, rate residual of graft insertion according to findings and symptoms under most appropriate analogy.	
Minimum rating.....	20
Note: The 100 percent rating for 1 year following surgical correction will commence after initial grant of the 1-month total rating under Sec. 4.30 assigned following hospital	

discharge.	
7111 Artery, any large artery, aneurysm of:	
In lower extremities, symptomatic.....	60
In upper extremities, symptomatic.....	40
Note: Rate post-operative residuals with graft insertion under most appropriate analogy, e.g., 7116, etc., minimum rating 20 percent.	
7112 Artery, small, aneurysmal dilatation of.....	10
7113 Arteriovenous aneurysm, traumatic:	
With cardiac involvement, minimum rating.....	60
Without cardiac involvement with marked vascular symptoms.	
Lower extremity.....	50
Upper extremity.....	40
With definite vascular symptoms.	
Lower extremity.....	30
Upper extremity.....	20
7114 Arteriosclerosis obliterans.	
7115 Thromboangiitis obliterans (Buerger's disease).	
7116 Claudication, intermittent:	
Severe form with marked circulatory changes such as to produce total incapacity or to require house or bed confinement.....	100
Persistent coldness of extremity with claudication on minimal walking.....	60
Well-established cases, with intermittent claudication or recurrent episodes of superficial phlebitis.....	40
Minimal circulatory impairment, with paresthesias, temperature changes or occasional claudication.....	20
Note: The 100 percent rating will not be applied under a diagnosis of intermittent claudication.	
7117 Raynaud's disease:	
Severe form with marked circulatory changes such as to produce total incapacity or to require house or bed confinement.....	100
Multiple painful, ulcerated areas.....	60
Frequent vasomotor disturbances characterized by blanching, rubor and cyanosis.....	40
Occasional attacks of blanching or flushing.....	20

Note: The schedular evaluations in excess of 20 percent under Diagnostic Codes 7114, 7115, 7116, and 7117 are for application to unilateral involvements. With bilateral involvements, separately meeting the requirements for evaluation in excess of 20 percent, 10 percent will be added to the evaluation for the more severely affected extremity only, except where the disease has resulted in an amputation. The resultant amputation rating will be combined with the schedular rating for the other extremity, including the

bilateral factor, if applicable. The 20 percent evaluations are for application to unilateral or bilateral involvement of both upper and lower extremities.

7118 Angioneurotic edema:

Severe; frequent attacks with severe manifestations and prolonged duration.....	40
Moderate; frequent attacks of moderate extent and duration.....	20
Mild; infrequent attacks of slight extent and duration.....	10

7119 Erythromelalgia:

Severe.....	40
Moderate.....	20
Mild.....	10

7120 Varicose veins.

Pronounced; unilateral or bilateral, the findings of the severe condition with secondary involvement of the deep circulation, as demonstrated by Trendelenburg's and Perthe's tests, with ulceration and pigmentation:

Bilateral.....	60
Unilateral.....	50

Severe; involving superficial veins above and below the knee, with involvement of the long saphenous, ranging over 2 cm. in diameter, marked distortion and sacculation, with edema and episodes of ulceration; no involvement of the deep circulation:

Bilateral.....	50
Unilateral.....	40

Moderately severe; involving superficial veins above and below the knee, with varicosities of the long saphenous, ranging in size from 1 to 2 cm. in diameter, with symptoms of pain or cramping on exertion; no involvement of the deep circulation:

Bilateral.....	30
Unilateral.....	20

Moderate; varicosities of superficial veins below the knees, with symptoms of pain or cramping on exertion:

Bilateral or unilateral.....	10
Mild; or with no symptoms.....	0

Note: Severe varicosities below the knee, with ulceration, scarring, or discoloration and painful symptoms will be rated as moderately severe.

7121 Phlebitis or thrombophlebitis, unilateral, with obliteration of deep return circulation, including traumatic conditions:

Massive board-like swelling, with severe and constant pain at rest.....	100
---	-----

Persistent swelling, subsiding only very slightly and incompletely with recumbency elevation with pigmentation

cyanosis, eczema or ulceration.....	60
Persistent swelling of leg or thigh, increased on standing or walking 1 or 2 hours, readily relieved by recumbency; moderate discoloration, pigmentation and cyanosis or persistent swelling of arm or forearm, increased in the dependent position; moderate discoloration, pigmentation or cyanosis.....	30
Persistent moderate swelling of leg not markedly increased on standing or walking or persistent swelling of arm or forearm not increased in the dependent position.....	10
Note: When phlebitis is present in both lower extremities or both upper extremities, apply bilateral factor.	
7122 Frozen feet, residuals of (immersion foot).	
With loss of toes, or parts, and persistent severe symptoms:	
Bilateral.....	50
Unilateral.....	30
With persistent moderate swelling, tenderness, redness, etc:	
Bilateral.....	30
Unilateral.....	20
With mild symptoms, chilblains:	
Bilateral.....	10
Unilateral.....	10
Note: With extensive losses higher ratings may be found warranted by reference to amputation ratings for toes and combination of toes; in the most severe cases, ratings for amputation or loss of use of one or both feet should be considered. There is no requirement of loss of toes or parts for the persistent moderate or mild under this diagnostic code.	
7123 Soft-tissue sarcoma (of vascular origin).....	100
Note: The 100 percent rating will be continued for 6 months following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.	
[29 FR 6718, May 22, 1964, as amended at 40 FR 42539, Sept. 15, 1975; 41 FR 11300, Mar. 18, 1976; 43 FR 45361, Oct. 2, 1978; 56 FR 51653, Oct. 15, 1991]	

Appendix 12 – Initial *Nehmer* Notice Letter

NAME
ADDRESS

In reply, refer to:
SECTION ID
File Number:
VETERAN NAME

We are conducting a special review of the above veteran's claims folder in accordance with *Nehmer v. U.S. Department of Veterans Affairs* (VA), which requires the payment of retroactive benefits to certain *Nehmer* class members. This case was identified as a potential *Nehmer* class member case based on the addition of Ischemic Heart Disease, Parkinson's Disease, and B-Cell/Hairy Cell Leukemia to the list of diseases presumptively associated with exposure to certain herbicide agents used in Vietnam. Entitlement to potential retroactive benefits applies to all cases wherein VA received a claim, or a claim for benefits was pending, or wherein VA denied benefits, on or after September 25, 1985, and before August 31, 2010. This case qualifies for the special review based on a possible prior VA benefits claim for one of the three new presumptive diseases.

If you have any additional information that you consider helpful in the review of the claim, please provide us a copy of such information as soon as possible. Examples of additional information include, but are not limited to, marriage certificates, birth certificates, Social Security numbers, and medical reports. Historical medical reports are especially important if the claim(s) was denied long ago and you have subsequent medical treatment records from the time the claim was filed to the present, including any period in between.

If we review the case and find that readjudication under the *Nehmer* court order is not required, we will notify you by separate letter. That letter will provide you with information on actions to take if you decide to submit additional information for reconsideration of the finding that readjudication is not required.

VA utilized the evidence of record to determine the recipient of this letter. In some cases this information is not current, such as when the veteran has relocated or died. As a result, some letters may reach a next of kin, such as brother, sister, other relative, or friend. If this is the case, and you know of the veteran's whereabouts, or have information regarding his or her next of kin, please complete the attached VA Form 21-4138, *Statement in Support of Claim*, to furnish any available information. If the veteran is deceased, please use the enclosed form to provide us with the name, address, and telephone number of any of the following individuals:

- Surviving spouse
- Child(ren)

- Parent(s)
- Executor/Administrator of his/her estate.

If an executor or administrator of estate was appointed, provide a copy of the letter of administration or letters testamentary bearing the signature and seal of the appointing court.

Optional development paragraph for dependency, delete any bullets that are not required:

We need additional information regarding dependency; please send us the following:

- VA Form 21-686c, *Declaration Of Status Of Dependents*. Please fill out every blank on the form which applies to you.
- VA Form 21-674, *Request for Approval of School Attendance*. Please fill out this form if you have school children.
- **[Free text – any other evidence that may be required such as continuous cohabitation, birth certificates, adoption paperwork, etc]**

Optional DBQ paragraph for LIVE VETERANS ONLY:

You may be able to help us expedite your case if you can have your VA or private physician complete the enclosed Disability Benefits Questionnaire. Submitting this questionnaire may eliminate the need for VA to schedule a Compensation examination to obtain current rating criteria on your case. This may help us make a decision faster. Have the physician complete all portions of the questionnaire and ensure that he or she signs and dates the questionnaire. In order to fully assist VA in expediting your case, please submit the questionnaire within 30 days. If you cannot provide this information, your physician is unable to assist, or we otherwise have not received it within 30 days, we may proceed with scheduling an examination for you.

You should send any information or evidence to the address at the top of this letter.

We strongly encourage you to send any information or evidence as soon as you can. **If we do not hear from you, we may make a decision on the claim after 30 days.** We will be able to decide your claim earlier if you complete and return the attached *Nehmer Notification Response* prior to the end of the 30-day period.

Although you can submit the information by mail, you may be able to expedite the review by providing some of the requested information using the phone or fax numbers listed below:

- Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
- [Direct line and fax number to D1BC, if applicable].

Sincerely yours,

Signature

VSCM Name

Veterans Service Center Manager

Enclosures: VA Form 21-4138
Nehmer Notification Response
[Enclosures vary if dependency development or DBQ is required]

cc: [POA]

NEHMER NOTIFICATION RESPONSE

We provided a notice to you regarding our review under the *Nehmer* court order. At this time, you may choose to indicate whether you are submitting additional information or have no additional evidence to submit.

Your signed response will let us know whether to decide your claim without waiting 30 days. If we receive no response, we will give you the full 30 days from the date we issued this letter.

Your signature on this response will not affect:

- Whether or not you are entitled to VA benefits;
- The amount of benefits to which you may be entitled; or
- The date any benefits will begin if your claim is granted.

RESPONSE

I elect one of the following: (Whichever box you check, you have one year from the date of the notice to give VA any other information or evidence you think will support your claim.)

☐ I have enclosed all the remaining information or evidence that will support my claim

☐ I have no other information or evidence to give VA to support my claim. Please decide my claim as soon as possible.

Claimant/Representative
Signature

Date

Appendix 13 – *Nehmer* Readjudication (EP 687) Review Worksheet 1

Nehmer Readjudication (EP 687) Worksheet 1

DRAFT – SUBJECT TO CHANGE

Static Fields:

CLAIM#: NAME of VETERAN ROJ:
VHA FACILITY# RC (Rating D1BC):
REVIEWER: [User Enter Name] DATE RECEIVED IN RC:
DATE ADDED TO DATABASE: [Authorized User Entry]
DATE CORRECTED: [Authorized User Entry]
DATE DELETED FROM DATABASE: [Authorized User Entry]
*Claims file received: [User will select from drop box containing: 319 – Columbia;
317 – St. Petersburg; 314 – Roanoke; 315 – Huntington; 402 – Togus;
310 – Philadelphia; 334 – Lincoln; 331; St. Louis; 351 – Muskogee; 349 – Waco;
345 – Phoenix; 377 – San Diego; 346 – Seattle; Other - free text up to 25
characters]*

NEHMER READJUDICATION

Eligibility Requirements

1. Does the claims file contain verified evidence of in-country Vietnam service?
[User will select Y/N] [If User selects Y, proceed to 1A]

1A. Please state where the verified evidence was found in the claims file. [User
free text up to 50 characters]

2. Identify the oldest prior claim filed or denied between 9/25/85 and 8/31/10 that
serves as the basis of readjudication for Ischemic heart disease (IHD),
Parkinson's, HCL and B-cell leukemias, and other Herbicide-Related Disabilities
[User will select]:

- SC claim
- SC and pension claim
- Live pension claim
- Informal claim
- Inferred claim for SC, or a claim reasonably raised by VA, or an instance
where VA failed to address a claim, or VA failed to provide a decision
notice letter to the class member
- N/A (Not a *Nehmer* class member) [If N/A, skip to item 7]

2A. What are the disability(ies) claimed or inferred? [User selects-multiple
selections apply]

- 1) Ischemic heart disease
- 2) Parkinson's disease
- 3) B-cell chronic lymphocytic leukemia/small lymphocytic
- 4) Acute lymphoblastic leukemia-mature B-cell type
- 5) B-cell prolymphocytic leukemia
- 6) Precursor B lymphoblastic leukemia
- 7) Hairy cell leukemia
- 8) Other
- 9) N/A

2B. What is the date of receipt of each of the prior claim(s) from item 2? [Auto list of claims from item 2] [User will enter date of receipt of each claim]

3. What is the type of medical evidence used to verify the disability for: [Auto list of diseases from 2A] [User selects-multiple selections apply for type medical evidence (VHA; Private Treatment or Other (SSA, etc) used for each disability identified]

Example:

Disability	VHA	Private Treatment	Other (SSA, etc)
Parkinson's	Y	N	N
Ischemic Heart	N	Y	Y

4. What is the rating date that disposed of the claim from items 2B? [User will enter date of rating that disposed of the claim(s) identified in item 2-Auto list of claims will be generated] [N/A choice]

5. What was the disposition of the claim(s) from item 4? [Auto list of the claims identified in item 2 and drop-down choices are grant (enter effective date benefits granted), denial or outstanding] [If grant is checked, proceed to item 6]

6. Is there a subsequent grant of the previous denial or deferral of benefits, and if so, insert the effective date for benefits that were previously granted based on the oldest prior claim from item 2. [User will enter the effective date benefits were previously granted] [Do not allow for entry into item 7. Skip to item 8]

7. Does the Veteran meet *Nehmer* all three eligibility requirements? [User will select Y/N]

[If "YES" go to item 8]

[If "NO", identify why the individual is not a *Nehmer* class member (multiple selections permitted and a selection is required) and go to item 7A] [If No in-country VN service is selected, proceed to 7A]

➤ No in-country VN service

- No prior claim filed or denied between 9/25/85 and 8/31/10
- No diagnosis of claimed disabilities

7A. Is development required? [User will select Y/N] [If YES proceed to 8; If NO skip to 19]

8. Does a prior rating decision correctly deny SC for [Auto list of disabilities identified in item 2A]? [User required entry]

Disability	Rating
------------	--------

Other Herbicide-Related Disabilities

9. Was a SC claim filed for any other AO disability? [User will select Y/N]
 [If "YES", User must select disability(ies) from the drop box and proceed to items 10-12]
 [If "NO" is checked, Auto skip of this area and proceed to the area entitled "Death Claims"]

[User selects-multiple selections permitted]

- Type 2 diabetes also known as type II diabetes mellitus or adult-onset diabetes
- Hodgkin's disease
- Multiple myeloma
- Non-Hodgkin's lymphoma
- Acute and Subacute peripheral neuropathy
- Porphyria cutanea tarda
- Prostate cancer
- Lung cancer
- Bronchus cancer
- Larynx cancer
- Trachea cancer
- Chronic lymphocytic Leukemia (CLL)
- AL Amyloidosis (ALA)
- Soft tissue sarcoma

10. What is the type medical evidence used to verify the diagnosis(es) [Auto list of all disabilities identified in item 9]? [User entry required]

[Multiple selections are allowed for the type medical evidence used for each disability identified]

Example:

Disability	VHA	Private Treatment	Other (SSA, lay
------------	-----	-------------------	-----------------

			statements, etc)
Type 2 diabetes	Y	N	N
Hodgkin's disease	N	Y	Y
Multiple myeloma	N	Y	Y

11. Does a rating decision grant SC for [Auto list named disabilities in item 9]?
[Y/N-User entry required]

12. Does a rating decision assign the correct effective date for [Auto list named disabilities identified in item 9]? [Y/N-User entry required]

Death Claim

Is the Veteran still living [Y/N-User entry required]

[If the Veteran is living-skip this entire area go to items under "Initial Screening Summary"]

13. Was there a claim for death benefits-to include burial filed or denied between 9/25/85 and 8/31/10[Y/N-User entry]

[If Yes, proceed to Q14]

[If No, Allow only Q15 and skip to Q19]

14. What is the date of receipt of death claims? [User will enter date-required entry]

15. What is the date of death? [User will enter date-required entry]

16. What is the Veteran's primary, secondary or contributory cause of death caused by [Auto list of disabilities identified in items 2A and 9-Allow for multiple selections of disabilities and for each disability, allow for the following drop-down choices: primary, secondary, contributory, N/A. Allow for one choice only].

Disability	Primary	Secondary	Contributory	N/A
Parkinson's	<u>Check mark</u>	Grayed-out	Grayed-out	Grayed-out
Ischemic Heart	Grayed-out	<u>Check mark</u>	Grayed-out	Grayed-out

17. What is the date that disposes of the death claim? [User will enter data field – Optional]

18. What was the disposition of the claim from item 13? [User will select from drop-down choices]

- granted [User will enter date of rating]
- denied[User will enter date of rating]
- deferred [User will enter date of rating]
- pending

[Stop and Save]

Initial Screening Summary

19. Is the *Nehmer* claim ready for rating activity? [Y/N-User entry]

[If "YES", drop-down choices. User entry required]

- a. Grant with medical development [If a grant with medical development is indicated proceed to 21]
- b. Full grant with no additional medical development [If a full grant is indicated skip to item 31]
- c. Denial [If Denial is indicated, skip to item 34]
- d. Memorandum for the record [If selected, skip to 32]
- e. Confirmed and continued (C&C) [If a C&C is indicated skip to item 34]

[If "NO", proceed to item 20 and do not allow an entry in the below drop box]

20. Is development action(s) required before a rating can be prepared? [Y/N-User entry]

[If 'YES', proceed to Rating Development Action(s) Required and do not allow an entry in items identified under Ready-to-Rate section (Q32-34)]

[If "NO", proceed to Rating Development Action(s) Required and allow for entry in the Ready-to-Rate section (Q32-34)]

[Stop and Save]

Rating Development Action(s)

21. Specify the medical development action(s) required to rate claim: [User will select from drop box-multiple choices allowed]

- Service Treatment Records
- Uniformed Services Hospital records
- VAE
- VAMC Treatment Records
- A statement/letter from most recent treating physician
- Private treatment records
- SSA Records
- Autopsy/summary medical report
- Death certificate
- Other

Non-Medical Development Action(s)

22. Are additional development actions required? [Y/N-User entry] [Add drop box and allow multiple selections and a write-in if "Other" is checked] [If NO, skip to the Q28]

22A. If so, what type of evidence? [User entry, select from list]

- birth certificate(s)
- marriage certificate
- divorce decree
- service verification/PIES/DPRIS
- other (free text – 5 sub-choices, up to 50 characters)

[Stop and Save]

23. Is development required for a valid address? [Y/N-User entry]

24. Is development required to identify payee(s)? [Y/N-User entry]

25. Is development required for paid-in-full receipts? [Y/N-User entry]

[If “YES”, User will select from list]

[If “NO”, go to Q26]

- funeral home/mortuary
- cemetery
- individual receipts

26. Is development required for [User will select from list]

- retired pay
- SBP
- separation pay
- N/A

27. What avenue of communication is being used to request required evidence identified in items 22-26, except PIES or JSRRC?

[User enters input date field and then check-boxes]

- telephone
- electronic mail
- written communication

[Stop and Save]

Receipt of Requested Evidence

28. Was all requested evidence received? [Y/N-User entry]

[If “YES”, go to Q28A]

[If “NO”, go to Q29]

28A. Enter the date the requested evidence was received [User will insert date-required entry] and proceed to “RVSR Decision” section.

29 Was the (request for evidence) mail returned undeliverable? [Y/N-User entry]
[If “YES” an entry is required in item 29A]
[If “NO”, go to Q30]

29A. If the (request for evidence) mail was returned undeliverable, is the requested evidence required in order to rate the claim? [Y/N-User entry]
[If “NO” proceed to item 32]
[If “YES” is selected go to “Decision Notice Area”]

30. Is additional evidence needed in order to rate? [Y/N-User entry]
[If “NO” go to “Ready-to-Rate section”]
[If “YES”, repeat Q21 – Q29. Label as Q30A – Q30J]

31. Is additional evidence needed to prepare award action(s)?
[If “NO” go to “RVSR” section]
If “YES”, repeat Q22 – Q27. Label as Q31A – 31F]

[Stop and Save]

RVSR Decision

32. Does retroactive payment under *Nehmer* apply to this claim? [Y/N-User entry]
[If “YES” skip item 33 and proceed to 34]
[If “NO” User entry is required in item 33]

33. Is C.F.R. § 3.114a applicable? [Y/N-User entry]

34. What is the disposition of the claim(s)? [User insert date of rating decision-Required Entry and allow multiple entries]

- SC
 - Grant (includes any additional medical development)
 - Denial (includes C&C and memorandum)
- DIC
 - Grant (includes any additional medical development)
 - Denial (includes C&C and memorandum)
- Burial
 - Grant (includes any additional medical development)
 - Denial (includes C&C and memorandum)

34A. Name of RVSR that prepared decision? [User enters name]

[Stop and Save]

Award Action [an entry is required in all items]

35. Did you prepare award action(s) for all claimed benefits? [Y/N-User entry]
[If Yes, go to Q36.]
[If No, go to Q40.]

36. Are there multiple payees? [Y/N-User entry]

37. Are retroactive benefits payable? [Y/N-User entry]
[If "NO", go to Q39]
[If "YES", go to 37A]

37A. Is the SC retroactive benefit payable based on: select [User entry-drop-down choices]

- New AO Presumptives [User entry-amount required]
- Other AO disabilities only [User entry-amount required]
- New AO Presumptives and other AO disabilities [User entry-amount required]
- No SC Retro

37B. Is the DIC retroactive benefit payable based on select: select [User entry-select from drop-down choices]

- New AO Presumptives [User entry-amount required]
- Other AO disabilities only [User entry-amount required]
- New AO Presumptives and other Herbicide-Related disabilities [User entry-amount required]
- No DIC Retro

37C. Is the retroactive SC burial benefit payable based on, select [User entry-select from drop-down choices]

- New AO Presumptives [User entry-amount required]
- Other AO disabilities only [User entry-amount required]
- New AO Presumptives and other Herbicide-Related disabilities [User entry-amount required]
- No Burial Retro

38. Did you appropriately withhold for retired pay, SBP, etc? [Y/N/N/A]

39. Did you award SC burial? [Y/N]

Decision Notice letter

40. Did you prepare a decision notice letter(s)? [Y/N-User entry]

[If "YES", go to 40A.]

[If "NO", go to go to Q41].

40A. Check all attachments that apply [User entry-check boxes of appropriate attachments and paragraph-education benefits]

- appeal rights-VAF 4107
- rating decision, VAF 21-8760
- VAF 22-5490
- VA Pamphlet 22-73-3
- VAF 28-8890
- VAF 28-1900
- CH31
- CHAMPVA
- Commissary and Exchange privileges
- Life Insurance
- POA paragraph
- other appropriate paragraphs or attachments (free text)

41. Select the type of decision prepared by the RVSR and enter the date the decision is sent for review by the authorization activity.

- Rating decision to include C&C rating and decision notice letter [User enters the date decision was sent to SVSR]
- Memorandum for the record [User enters the date the memorandum for the record is sent to SVSR and selects the reason(s) why a memorandum is prepared-If an entry is not shown in items "a" or "b" do not allow an entry in item "c"]
 - a. No In-country Vietnam Service
 - b. No Prior Claim filed or denied between 9/25/85 and [automatic insert date-date pending of final regulation-unknown at this time]
 - c. No Diagnosis of claimed disability(ies) [Entry in this field is only allowed if in conjunction with item a or b]

[Stop and Save]

Authorization Review

42a. Select the final disposition of the claim approved by the reviewer. [User selects appropriate disposition and inserts date of approval-Required Entry and multiple entries allowed]

- SC Grant without medical development
- SC Grant with additional medical development
- Denial of Live Claim (includes C&C)
- DIC Grant without medical development
- DIC Grant with additional medical development (i.e., A/A)
- Burial Grant
- Denial of Death Claim (includes C&C)
- Memorandum for the record [If 41c is the only selection-do not allow an entry in this field]

42b. Name of individual who approved final action. [User must enter name of individual]

[Stop and Save]

Miscellaneous Issues

44. Are there any outstanding deferred issues, unrelated to *Nehmer*, that require action by the ROJ? [Y/N-User entry]

45. Was decision notice letter returned undeliverable? [Y/N-User entry]

46. Enter date claims file was returned to RO of jurisdiction: [User entry date field]

46A. Select the appropriate ROJ [User entry drop down list]:

301	Boston	317	St. Petersburg
304	Providence	318	Winston-Salem
306	New York	319	Columbia
307	Buffalo	320	Nashville
308	Hartford	321	New Orleans
309	Newark	322	Montgomery
310	Philadelphia	323	Jackson
311	Pittsburgh	325	Cleveland
313	Baltimore	326	Indianapolis
314	Roanoke	327	Louisville
315	Huntington	328	Chicago
316	Atlanta	329	Detroit

330	Milwaukee	354	Reno
331	St. Louis	355	San Juan
333	Des Moines	358	Manila
334	Lincoln	362	Houston
335	St. Paul	372	Washington
339	Denver	373	Manchester
340	Albuquerque	377	San Diego
341	Salt Lake City	402	Togus
343	Oakland	405	White River Jct.
344	Los Angeles	436	Ft. Harrison
345	Phoenix	437	Fargo
346	Seattle	438	Sioux Falls
347	Boise	442	Cheyenne
348	Portland	452	Wichita
349	Waco	459	Honolulu
350	Little Rock	460	Wilmington
351	Muskogee	463	Anchorage

For Information Purpose Only (Static Fields):

LIST of ALL PRESUMPTIVE HERBICIDE CONDITIONS UNDER THE *NEHMER* COURT ORDER:

Soft-tissue Sarcoma	October 15, 1991
Hodgkin's disease	February 3, 1994
Non-Hodgkin's lymphoma	May 19, 1993
Porphyria cutanea tarda	February 3, 1994
Lung cancer	June 9, 1994
Bronchus cancer	June 9, 1994
Larynx cancer	June 9, 1994
Trachea cancer	June 9, 1994
Multiple myeloma	June 9, 1994
Acute and Subacute peripheral neuropathy	November 7, 1996
Prostate cancer	November 7, 1996
Type 2 Diabetes	May 8, 2001
Chronic lymphocytic Leukemia (CLL)	October 16, 2003
AL Amyloidosis (ALA)	May 7, 2009
Ischemic heart disease	August 31, 2010
Parkinson's disease	August 31, 2010B-cell
chronic lymphocytic leukemia/small lymphocytic	August 31, 2010
Acute lymphoblastic leukemia-mature B-cell type	August 31, 2010
B-cell prolymphocytic leukemia	August 31, 2010
Precursor B lymphoblastic leukemia	August 31, 2010
Hairy cell leukemia	August 31, 2010

Appendix 14 – *Nehmer* Readjudication Data Collection for EP 687

NOTE:

Request comprehensive reports showing total numbers, RC#, and other specific data as shown below.

Pull all detailed reports by RC#, ROJ, claim #, name of Veteran, and other specific data as shown below.

	Reports
1	Identify the disability (Q2A/Q9)-reflective of 42a
2	Identify Survivor Claims (Q14)
3	Pending Receipt of Evidence (Q20 "Yes" checked) (count only once) *Medical Development to include specific evidence (Q21) *Non-Medical Evidence (Q22 "Yes" checked) *Address Validity (Q23 "Yes" checked) *Payee Identification (Q24 "Yes" checked) *Burial Receipts (Q25 "Yes" checked) *DFAS (Q26-do not collect N/A selection)
4	Mail Returned-Development Actions (Q29 "Yes" checked)
5	Ready to Rate (Q28 "Yes" checked)
6	Initial Rating Decisions (Q34)
7	Decisions (Rating, Award, Notice Letter) Pending Approval (Q41)
8	Not a <i>Nehmer</i> Class Member (Q41a, Q41b)
9	Type Deficiencies Identified (42 "No" checked, pull a-j)
10	Disposition of Claims-Approved and Released Decision Letters and Ratings (Q42a) Show two reports- (1) count all actions per claim; (2) count one action per claim in this order- SC grant without medical development; SC grant with additional medical development; DIC grant without medical development; DIC grant with additional medical development; burial grant; denial live claim; denial of death claim; and memorandum for the record
11	Retroactive Benefit Amounts (Q37A, Q37B, Q37C)
12	Final Decisions Returned Undeliverable (Q45 "Yes" checked)

Appendix 15 – *Nehmer* Adjudication (EP 681) Review Worksheet 2

Nehmer Adjudication (EP 681) Review Worksheet 2

DRAFT – SUBJECT TO CHANGE

Static Fields:

CLAIM#: _____ NAME of VETERAN _____ RO: _____
INITIAL REVIEWER: [User Enter Name]
DATE ADDED TO DATABASE: [Authorized User Entry]
DATE CORRECTED: [Authorized User Entry]
DATE DELETED FROM DATABASE: [Authorized User Entry]

Pending Claim Information

1. Does the claims file contain verified evidence of in-country Vietnam service?
[User will select Y/N]

2. Identify the pending claim filed, that serves as the basis for adjudication, between 09/25/85 and 08/31/10 for Ischemic heart disease (IHD), Parkinson's, and HCL and B-cell leukemias [User will select-one option]:

- a. SC claim
- b. SC and pension claim
- c. Pension claim
- d. Informal claim
- e. Inferred claim for SC or a claim reasonably raised by VA or an instance where VA failed to address a prior claim or VA failed to provide a decision notice letter to the class member

2A. What are the disability(ies) claimed or inferred? [User selects-multiple selections apply]

- 1. Ischemic heart disease
- 2. Parkinson's disease
- 3. B-cell chronic lymphocytic leukemia/small lymphocytic
- 4. Acute lymphoblastic leukemia-mature B-cell type
- 5. B-cell prolymphocytic leukemia
- 6. Precursor B lymphoblastic leukemia
- 7. Hairy cell leukemia
- 8. Other

2B. What is the date of receipt of the claim from item 2? [Auto list of claim from item 2] [User will enter date of receipt of the claim]

Other AO Disabilities

3. Was a SC claim (live or death) filed for any other herbicide-related disabilities prior to the current pending claim? [User will select Y/N]
[If “YES”, User must select disabilities from the drop box and proceed to item 4]
[If “NO” is checked, Auto skip of this area and proceed to the area entitled “Death Claims”]

[User selects-multiple selections permitted]

- a. Type 2 diabetes also known as type II diabetes mellitus or adult-onset diabetes
- b. Hodgkin’s disease
- c. Multiple myeloma
- d. Non-Hodgkin’s lymphoma
- e. Acute and Subacute peripheral neuropathy
- f. Porphyria cutanea tarda
- g. Prostate cancer
- h. Lung cancer
- i. Bronchus cancer
- j. Larynx cancer
- k. Trachea cancer
- l. Chronic lymphocytic Leukemia (CLL)
- m. AL Amyloidosis (ALA)
- n. Soft tissue sarcoma

4. What is the type medical evidence used to verify the diagnosis(es) for [Auto list of all disabilities identified in items 2A and 3]? [User selects multiple selections that apply for the type medical evidence (VHA; Private Treatment or Other (SSA lay statements, etc.) used for each disability identified]

Example:

Disability	VHA	Private Treatment	Other (SSA, lay statements, etc)
IHD	Y	N	N
Hodgkin’s disease	N	Y	Y
Multiple myeloma	N	Y	Y

5. Does a rating decision grant/deny SC (live or death) for [Auto list named disabilities in items 2A and 3]? [Y/N-User entry required] [For all disabilities in the auto list, a required dropdown containing “Grant,” “Deny,” and “N/A” After user selects from dropdown, they will be prompted for a required date]

6. Does a rating decision assign the correct effective date for [Auto list named disabilities identified in items 2A and 3]? [Y/N-User entry required]

Death Claim

Is the Veteran still living [Y/N-User entry required]

[If the Veteran is living-skip this entire area go to items under “Initial Screening Summary”]

7. Was there a claim for death benefits-to include burial filed between 9/25/85 to 8/31/10? [Y/N-User entry]

[If Yes, proceed to Q8]

[If No, skip to Q8 and allow entry in Q9 and skip to Q11]

8. What is the date of receipt of death claim? [User will enter date-required entry]

9. What is the date of death? [User will enter date-required entry]

10. What is the Veteran's primary, secondary or contributory cause of death?
[Auto list of disabilities identified in items 2A and 3-Allow for multiple selections of disabilities and for each disability, allow for the following drop-down choices: primary, secondary, contributory, N/A. Allow for one choice only]

Disability	Primary	Secondary	Contributory	N/A
Parkinson's	<u>Check mark</u>	Grayed-out	Grayed-out	Grayed-out
Ischemic Heart	Grayed-out	<u>Check mark</u>	Grayed-out	Grayed-out

[Stop and Save]

Initial Screening Summary

11. Is the *Nehmer* claim ready for rating activity? [Y/N-User entry]

[If “YES”, drop-down choices. User entry required]

- Grant with medical development [If a grant with medical development is indicated proceed to 13]
- Full grant with no additional medical development [If full grant is indicated skip to item 14]
- Denial [If Denial is indicated, skip to 28]
- Confirmed and continued (C&C) [If a C&C is indicated skip to item 28]

[If “NO”, proceed to item 12]

12. Is development action(s) required before a rating can be prepared? [Y/N-User entry]

[If “YES”, proceed to Rating Development Action(s) Required and do not allow an entry in items identified under “RVSR Decision” (Q26-Q29)]

[If “NO”, proceed to Rating Development Action(s) Required and allow for entry in the “RVSR Decision” section (Q26-Q29)]

Rating/Development Action(s)

13. Specify the medical development action(s) required to rate claim: [User will select from drop box-multiple choices allowed]

- a. Service Treatment Records
- b. Uniformed Services Hospital records
- c. VAE
- d. VAMC Treatment Records
- e. A statement/letter from most recent treating physician
- f. Private treatment records
- g. SSA Records
- h. Autopsy/summary medical report
- i. Death certificate
- j. Other

Non-Medical Development Action(s)

14. Are additional development actions required? [Y/N-User entry] [Add drop box and allow multiple selections and a write-in if “Other” is checked] [If NO, skip to the Q20]

14A. If so, what type of evidence? [User entry, select from list]

- a. birth certificate(s)
- b. marriage certificate
- c. divorce decree
- d. service verification/PIES/DPRIS
- e. other (free text – 5 sub-choices, up to 50 characters)

15. Is development required for a valid address? [Y/N-User entry]

16. Is development required to identify payee(s)? [Y/N-User entry]

17. Is development required for paid-in-full receipts? [Y/N-User entry]

[If “YES”, User will select from list]

[If “NO”, go to Q18]

- a. funeral home/mortuary
- b. cemetery
- c. individual receipts

18. Is development required for [User will select from list]

- a. retired pay
- b. SBP
- c. separation pay
- d. N/A

19. What date was the VCAA/development letter sent?
[User enters input date field]

19A. What avenue of communication is being used to request required evidence identified in items 13-18, except PIES or JSRRC? [User enters input date field and then check-boxes]

- telephone
- electronic mail
- written communication

[Stop and Save]

Receipt of Requested Evidence

20. Was all requested evidence received? [Y/N-User entry]
[If "YES", go to Q21]
[If "NO", go to Q22]

21. Enter the date the requested evidence was received [User will insert date-required entry] and proceed to "RVSR Decision" section.

22. Was the (request for evidence) mail returned undeliverable? [Y/N-User entry]
[If "YES" an entry is required in item 23]
[If "NO", go to Q24]

23. If the (request for evidence) mail was returned undeliverable, is the requested evidence required in order to rate the claim? [Y/N-User entry]
[If "NO" proceed to item 26]
[If "YES" is selected go to "RVSR Decision"]

24. Is additional evidence needed in order to rate? [Y/N-User entry]
[If "NO" go to "RVSR Decision" section]
[If "YES", repeat Q13]

25. Is additional evidence needed to prepare award action(s)?

[If "NO" go to "RVSR Decision" section]

If "YES", repeat Q14-Q19]

[Stop and Save]

RVSR Decision

26. Does retroactive payment under *Nehmer* apply? [Y/N-User entry]

[If "NO" User entry is required in item 27]

[If "YES" skip item 27 and proceed to 28]

27. Is CFR 3.114a applicable? [Y/N-User entry]

28. What is the disposition of the claim(s)? [User insert date--Required Entry and allow multiple entries]

➤ SC

- Grant (includes any additional medical development)
- Denial (includes C&C)

➤ DIC

- Grant (includes any additional medical development)
- Denial (includes C&C)

➤ Burial

- Grant (includes any additional medical development)
- Denial (includes C&C)

28A. Name of RVSR that prepared decision? [User enters name]

[Stop and Save]

Award Action [an entry is required in all items]

29. Did you prepare award action(s) for all claimed benefits? [Y/N-User entry]

[If Yes, go to Q30]

[If No, go to Q34]

30. Are there multiple class members? [Y/N-User entry]

31. Are retroactive benefits payable? [Y/N-User entry]

[If "YES", go to 31A]

[If "NO", go to Q33]

31A. Is the SC retroactive benefit payable based on: select [User entry-drop-down choices]

- a. New AO Presumptives [User entry-amount required]
- b. Other AO disabilities only [User entry-amount required]
- c. New AO Presumptives and other AO disabilities [User entry-amount required]
- d. No SC Retro

31B. Is the DIC retroactive benefit payable based on select: select [User entry-select from drop-down choices]

- a. New AO Presumptives [User entry-amount required]
- b. Other AO disabilities only [User entry-amount required]
- c. New AO Presumptives and other AO disabilities [User entry-amount required]
- d. No DIC Retro

31C. Is the retroactive SC burial benefit payable based on, select [User entry-select from drop-down choices]

- a. New AO Presumptives [User entry-amount required]
- b. Other AO disabilities only [User entry-amount required]
- c. New AO Presumptives and other AO disabilities [User entry-amount required]
- d. No Burial Retro

32. Did you appropriately withhold for retired pay, SBP, etc? [Y/N]

33. Did you award SC burial? [Y/N]

Decision Notice letter

34. Did you prepare a decision notice letter(s)? [Y/N-User entry]

[If "YES", go to Q34A.]

[If "NO", go to go to Q36A].

34A. Check all attachments that apply [User entry-check boxes of appropriate attachments and paragraph-education benefits]

- a. appeal rights-VAF 4107
- b. rating decision, VAF 21-8760
- c. VAF 22-5490
- d. VA Pamphlet 22-73-3
- e. VAF 28-8890
- f. VAF 28-1900

- g. CH31
- h. CHAMPVA
- i. Commissary and Exchange privileges
- j. Life Insurance
- k. POA paragraph
- l. other appropriate paragraphs or attachments (free text)

35. Select the type of decision prepared by the RVSR and enter the date the decision was sent to SVSR for authorization
- a. Rating decision and decision notice letter [user entry – date field]
 - b. Confirmed and continued rating and decision notice letter [User entry-date field]

[Stop and Save]

Authorization Review

- 36A. Select the final disposition of the claim approved by the initial reviewer.
[User selects appropriate disposition and inserts date of approval-Required Entry and multiple entries allowed]

- SC Grant without medical development
- SC Grant with additional medical development
- Denial of Live Claim (includes C&C)
- DIC Grant without medical development
- DIC Grant with additional medical development (i.e., A/A)
- Burial Grant
- Denial of Death Claim (includes C&C)

- 36B. Name of individual who approved final action [User must enter name of individual who approved final action and date-required entry]

[Stop and Save]

Miscellaneous Issues

38. Are there any outstanding deferred issues, unrelated to *Nehmer*, that require action? [Y/N-User entry]

39. Was decision notice letter returned undeliverable? [Y/N-User entry]

For Information Purpose Only (Static Fields):

LIST of ALL PRESUMPTIVE HERBICIDE CONDITIONS UNDER THE *NEHMER* COURT ORDER:

Soft-tissue Sarcoma	October 15, 1991
Hodgkin's disease	February 3, 1994
Non-Hodgkin's lymphoma	May 19, 1993
Porphyria cutanea tarda	February 3, 1994
Lung cancer	June 9, 1994
Bronchus cancer	June 9, 1994
Larynx cancer	June 9, 1994
Trachea cancer	June 9, 1994
Multiple myeloma	June 9, 1994
Acute and Subacute peripheral neuropathy	November 7, 1996
Prostate cancer	November 7, 1996
Type 2 Diabetes	May 8, 2001
Chronic lymphocytic Leukemia (CLL)	October 16, 2003
AL Amyloidosis (ALA)	May 7, 2009
Ischemic heart disease	August 31, 2010
Parkinson's disease	August 31, 2010
B-cell chronic lymphocytic leukemia/small lymphocytic	August 31, 2010
Acute lymphoblastic leukemia-mature B-cell type	August 31, 2010
B-cell prolymphocytic leukemia	August 31, 2010
Precursor B lymphoblastic leukemia	August 31, 2010
Hairy cell leukemia	August 31, 2010

Appendix 16 – *Nehmer* Adjudication Data Collection for EP 681

NOTE:

Request comprehensive reports showing total numbers, RC#, and other specific data as shown below.

Pull all detailed reports by RC#, ROJ, claim #, name of Veteran, and other specific data as shown below.

	Reports
1	Identify the disability (Q2A/Q3)-reflective of 36a
2	Identify Survivor Claims (Q8)
3	Pending Receipt of Evidence (Q12 "Yes" checked) (count only once) *Medical Development to include specific evidence (Q13) *Non-Medical Evidence (Q14 "Yes" checked) *Address Validity (Q15 "Yes" checked) *Payee Identification (Q16 "Yes" checked) *Burial Receipts (Q17 "Yes" checked) *DFAS (Q18-do not collect N/A selection)
4	Mail Returned-Development Actions (Q22 "Yes" checked)
5	Ready to Rate (Q20 "Yes" checked)
6	Initial Rating Decisions (Q28)
7	Decisions (Rating, Award, Notice Letter) Pending Approval (Q35)
8	Type Deficiencies Identified (36 "No" checked, pull a-j)
9	Disposition of Claims-Approved and Released Decision Letters and Ratings (Q36A) Show two reports- (1) count all actions per claim; (2) count one action per claim in this order- SC grant without medical development; SC grant with additional medical development; DIC grant without medical development; DIC grant with additional medical development; burial grant; denial live claim; and denial of death claim
10	Retroactive Benefit Amounts (Q31A, Q31B, Q31C)
11	Final Decisions Returned Undeliverable (Q39 "Yes" checked)

Nehmer SME Checklist Instructions

Manual Completion:

- The SMEs will input the following:
 - Claim number
 - Veteran's name
 - RO [Claims controlled under end products 681 will require input of the RO]
 - RC and ROJ [Claims controlled under end products 687 will require input of the RC and ROJ]
- The SMEs will legibly print their full name in the appropriate block
- The SMEs will sign their name and input the date in the appropriate blocks
- The SMEs will answer all questions
- The SMEs will provide explanations for all "No" answers marked with an asterisk [*] on the "*Nehmer* Rating or Authorization SME Checklist Explanations" sheets
- The Rating SME will sign as second signature on the rating decision
- The SMEs will file copies of the signed checklists in the claims file
- The SMEs will save copies of the checklists in Virtual VA

Automated Completion:

- The following fields will be automated in the database:
 - Claim number
 - Veteran's name
 - RO [Claims controlled under end products 681 will require input of the RO]
 - RC and ROJ [Claims controlled under end products 687 will require input of the RC and ROJ]
- The SMEs will type their full name in the appropriate block
- The SMEs will answer all questions
- The SMEs will provide an explanation in a text field for all "No" answers
- The Rating SME will sign as second signature on the rating decision
- The SMEs will:
 - Print the checklist
 - Sign their name and input the date in the appropriate blocks
- The SMEs will file a copy of the signed checklist in the claims file

NOTE: All questions require a response.

NOTE: All questions on the automated checklist must be answered in sequential order.

NEHMER RATING SME CHECKLIST			
Claim Number:		Veteran's Name:	
RO:	RC:	ROJ:	
Print Name of SME Reviewer:			
SME Reviewer Signature:		Date of Review:	
	Yes	No	N/A
1. Is there evidence of in-country service in Vietnam?			
2. Is IHD, PD or HCL/BCL claimed OR denied between 9/25/85 and 8/31/10?			
3. Is there a confirmed diagnosis of the claimed presumptive(s)?			
4. Is a diagnosis ruled out for the claimed presumptive(s)?			
5. Did VA request and obtain additional evidence identified by the class member? *			
6. Is the denial for SC correct? *			
7. If SC for IHD, PD or HCL/BCL is in order, does the decision award the earliest justifiable effective date? *			
8. Is the evidence adequate for rating purposes? *			
9. Does the evidence of record show the current level of disability? *			
10. Is the evaluation assigned appropriate based on the current level of disability? *			
11. Is there evidence of a secondary condition(s) due to IHD, PD or HCL/BCL?			
12. Does the medical evidence on file show current level of disability for the secondary condition(s)? *			
13. Is the correct effective date(s) for the secondary condition(s) assigned? *			
14. Is the correct evaluation for the secondary condition(s) assigned? *			
15. Are other AO presumptive disability(s) noted in the record?			
16. If the AO presumptive disability(s) is affected by <i>Nehmer</i> , was the issue correctly addressed? *			
17. If deceased, did AO related disability(s) cause, contribute to, or hasten death?			
18. Is SC death established? *			
19. If SC death was denied, was denial correct? *			
20. Was the evidence cited adequate for the Memorandum for the Record? *			
21. Was all-pertinent evidence discussed in the rating decision? *			
22. Was the basis of each decision identified and explained in the rating decision? *			
23. If the minimum evaluation was assigned, was additional development initiated? *			
24. If applicable, were IU and SMC(s) correctly considered and applied? *			
25. Are all <i>Nehmer</i> issue(s)/comment(s) addressed and closed in this rating? *			

* Explain any deferred *Nehmer* AO issue(s) and any "no" answer(s).

** Rating SME Checklist must be complete in full before the Authorization SME Checklist can be entered

NEHMER RATING SME CHECKLIST EXPLANATIONS

5. Did VA request and obtain additional evidence identified by the class member?
6. Is the denial for SC correct?
7. If SC for IHD, PD or HCL/BCL is in order, does the decision award the earliest justifiable effective date?
8. Is the evidence adequate for rating purposes?
9. Does the evidence of record show the current level of disability?
10. Is the evaluation assigned appropriate based on the current level of disability?
12. Does the medical evidence on file show current level of disability for the secondary condition(s)?
13. Is the correct effective date(s) for the secondary condition(s) assigned?
14. Is the correct evaluation for the secondary condition(s) assigned?
16. If the AO presumptive disability(s) is affected by <i>Nehmer</i> , was the issue correctly addressed?
18. Is SC death established?
19. If SC death was denied, was denial correct?
20. Was the evidence cited adequate for the Memorandum for the Record?
21. Was all pertinent evidence discussed in the rating decision?
22. Was the basis of each decision identified and explained in the rating decision?
23. If the minimum evaluation was assigned, was additional development initiated?
24. If applicable, were IU and SMC(s) correctly considered and applied?
25. Are all <i>Nehmer</i> issue(s)/comment(s) addressed and closed in this rating?

NEHMER AUTHORIZATION SME CHECKLIST

Claim Number:	Veteran's Name:
RO:	RC: ROJ:
Print Name of SME Reviewer:	
SME Reviewer Signature:	Date of Review:

	Yes	No	N/A
1. Was DIC paid? *			
2. Was SC burial paid? *			
3. Were transportation charges paid correctly? *			
4. Were retroactive benefits paid (live and/or death) to the survivor(s)? *			
5. Were all dependents correctly added and/or removed from the award? *			
6. Were offsets, i.e. MRP, SBP, separation, severance and 1151, correctly applied? *			
7. Was the proper class member/payee paid? *			
8. Was the class member(s) notified? *			
9. Is the notification letter adequate? *			
10. Did the notification include appeal rights?			
11. Was the POA included in the notification letter (if applicable)?			
12. Are all <i>Nehmer</i> issue(s)/comment(s) addressed and closed in this rating?			

* An explanation is required for "no" answers to these entries.

NEHMER AUTHORIZATION SME CHECKLIST EXPLANATIONS	
1. Was DIC paid?	
2. Was SC burial paid?	
3. Were transportation charges paid correctly?	
4. Were retroactive benefits paid (live and/or death) to the survivor(s)?	
5. Were all dependents correctly added and/or removed from the award?	
6. Were offsets, i.e. MRP, SBP, separation, severance and 1151, correctly applied?	
7. Was the proper class member/payee paid?	
8. Was the class member(s) notified?	
9. Is the notification letter adequate?	
12. Are all <i>Nehmer</i> issue(s)/comment(s) addressed and closed in this rating?	

**Appendix 18 – Footnote 1: Need for Amendment to 38 C.F.R. § 3.816
Regarding *Nehmer* Claims (Appx. 18 is provided for historical purposes)**

The following section provides historical communication regarding what evidence serves as a claim under, and therefore the application of, “footnote 1,” and also serves to show that current instruction is wholly consistent with such history and not new or novel.

The case of *Nehmer v. United States Veterans' Administration* originated in 1986 as a class-action lawsuit against VA by Vietnam veterans and their survivors who alleged that VA had improperly denied their claims for service connection for disability or death allegedly caused by exposure to the herbicide Agent Orange in service.

In a May 3, 1989, decision, the United States District Court for the Northern District of California ruled in the *Nehmer* case that a VA regulation, issued in 1985, which implemented legislation directing the establishment of standards and criteria for adjudication of claims by Vietnam veterans allegedly suffering from herbicide-related disabilities, was invalid because the "cause and effect" standard used in the regulation was inconsistent with the intent of Congress. The court concluded that Congress intended VA to apply a more lenient standard requiring only a "significant statistical association" between herbicide exposure and the occurrence of a disease in exposed persons. The court invalidated VA's regulation and voided all benefit denials under that regulation.

In May 1991, the *Nehmer* parties entered into a "Final Stipulation and Order" (Final Stipulation) outlining the actions to be taken in response to the court's decision. Among other things, the Final Stipulation provided, in general: (1) that VA would issue new regulations in accordance with the Agent Orange Act of 1991; (2) that, after issuing such regulations, VA would readjudicate those claims where a prior denial had been voided by the court's 1989 order and would initially adjudicate all similar claims filed subsequent to the court's order; and (3) that, if benefits were awarded upon such readjudication or adjudication, the effective date of the award would be the date the claim was filed.

In a February 11, 1999, decision, the district court explained and clarified the scope of its 1989 decision. The court stated that its 1989 decision had voided all VA decisions that were rendered while the invalid regulation was in effect and which denied service connection for a Vietnam veteran's disease that was later found to be associated with herbicide exposure under the regulations issued under the Agent Orange Act of 1991. The court explained that it was irrelevant whether the claimant or VA had referenced herbicide exposure or the invalid regulation in connection with the prior claim. Pursuant to that decision, the effective date of service connection granted under the 1994 regulations establishing presumptions of service connection for certain diseases may relate back to the date of an earlier claim for service connection of the same disease,

regardless of whether the earlier claim was expressly based on herbicide exposure.

VA promulgated 38 C.F.R. § 3.816, which codified the procedures for adjudicating claims under the Final Stipulation. On January 21, 2004, class counsel asserted in a letter to the Department of Justice (DOJ) that footnote 1 in paragraph 5 of the Final Stipulation establishes a substantive rule that VA failed to address in section 3.816. Paragraph 5 states, in relevant part, as follows:

For any of the [presumptive diseases], as to any denials of claims which were voided as a result of the Court's May 3, 1969 Order, the effective date for disability compensation or dependency and indemnity compensation ... , if the claim is allowed upon readjudication ... , will be the date the claim giving rise to the voided decision was filed ..., assuming the basis upon which compensation is granted after readjudication is the same basis upon which the original claim was filed,¹ or the date the claimant became disabled or death occurred, whichever is later. In the event the basis upon which a claim for compensation benefits is granted after readjudication is different than the basis for the original claim giving rise to the voided decision,² the effective date ... will be the date on which the claim asserting the basis upon which the claim is granted was filed, or the date the claimant became disabled or death occurred, whichever is later.

(emphasis added). Footnote 1 provides: "The basis upon which the original claim was filed refers to the disease[s] or condition[s] which Chapter 46 of VA Manual M21-1, paragraph 46.02 required to be coded in the ratings decision contained in the claimant's claim file, which ratings decision was voided by the Court's May 3, 1989 Order." (emphasis added).

At the time that the parties entered the Final Stipulation, paragraph 46.02 of VA Adjudication Procedure Manual M21-1 (1965) provided:

- a. Compensation Ratings. All disabilities claimed will be given consideration as to service connection and be coded as a disability rating on VA Form 21-6796. Any additional disabilities noted will be coded, except:
 - (1) Acute transitory conditions that leave no residuals.
 - (2) Noncompensable residuals of venereal disease.
 - (3) Disabilities noted only on the induction examination, or conditions recorded by history only.

(4) Disabilities found by authorization to have not been incurred "in line of duty".

b. Pension Ratings. Code all claimed or noted disabilities on VA Form 21-6796 and show the percent of disablement for each unless the disabilities have been held to be due to the claimant's own willful misconduct by Administrative Decision.

(cross references omitted). The Final Stipulation defined "the basis upon which the original claim was filed" with reference to paragraph 46.02 of the manual, which established the requirement that additional noted disabilities be "coded," unless a listed exception applied. Among other things, the manual provision excepted from the coding requirement "conditions recorded by history only." Thus, noted disabilities that have been diagnosed were required to be coded in a rating decision even though the claimant may not have raised any issue concerning those disabilities in the claim being adjudicated. The provision is clear that the term "code" refers to rating codes, not diagnostic codes. Accordingly, a condition that the paragraph 46.02 language "required to be coded," is one that the provision required to be rated in a decision.

Class counsel asserts that the paragraph 46.02 language, which footnote 1 incorporated in the Final Stipulation, established "objective criteria ... for determining whether a rating decision denied compensation for a particular disease." Class counsel further contends that a claim falls within the effective-date provisions of paragraph 5 of the Final Stipulation "if paragraph 46.02 of M21-1 required the covered Agent Orange-related disease to be 'coded' in the rating decision on the claim." In our view, this is a reasonable interpretation of the Final Stipulation because it is consistent with the court's and the parties' intent to provide a remedy for the *Nehmer* class. In other words, in the context of this litigation, it is reasonable to assume that, in 1991, the court and the parties intended to provide a remedy for persons with diagnosed herbicide-related conditions who either received a rating decision denying an express claim for service connection for that condition; received a rating decision that addressed (coded as non-service-connected) an unclaimed herbicide-related condition; or received a rating decision that failed to address a noted condition (failed to code the condition). Each of these types of "decisions" could be viewed as being voided by the court's May 1989 order. However, section 3.816 currently covers only the first type of decision.

A second reasonable but less pro-veteran interpretation of the footnote is that it merely prescribes how to determine the correct effective date for adjudications conducted under paragraph 3 and 4 of the Final Stipulation. Paragraph 3 provides that as soon as VA issues a final rule service-connecting any disease under the Agent Orange Act of 1991, it "shall promptly thereafter readjudicate all claims for any such disease which were voided by the Court's Order of May 3,

1989." Paragraph 4 provides that VA shall rely upon its Special Issue Rating System (SIRS) or notice from an individual claimant to identify claimants who received qualifying denials. Identified claimants may then be awarded an earlier effective date using the paragraph 5 criteria. Class counsel essentially argues that paragraph 5, rather than paragraphs 3 and 4, identifies the claim denials that the district court voided in its May 1989 decision. That argument is arguably incorrect because it reads paragraph 5 out of context and ignores the paragraph 4 provision that requires VA to use SIRS to identify eligible claimants. SIRS does not contain information concerning unclaimed disabilities that paragraph 46.02 of Manual M21-1 required to be coded.

Class counsel intends to bring this matter to the district court's attention if we refuse to amend section 3.816. As stated above, the Final Stipulation is subject to two reasonable interpretations, only one of which could be viewed as expanding the remedy available to the *Nehmer* classmembers. Clearly, the district court has every reason to select the interpretation proposed by class counsel, as it is a reasonable, pro-veteran interpretation that is consistent with the purpose of the Final Stipulation. In addition, the court could conclude that application of the alternative interpretation would lead to an absurd result. For example, a veteran who, in 1986, filed a claim for service connection for respiratory cancer and received a rating decision denying that claim would be entitled to retroactive benefits under *Nehmer*. However, another veteran, who was also diagnosed with a respiratory cancer and who deliberately limited his 1986 claim to a back condition, knowing that VA could not service-connect his cancer in the absence of a presumption, would not be entitled to retroactive benefits under *Nehmer*.

The pro-veteran interpretation would require a minor amendment to section 3.816(c)(1), which governs effective dates for decisions voided by the district court's May 3, 1989, order.

Appendix 19 – VSR and SVSR Responsibilities

VSR Responsibilities:

- Inputting the award data into the appropriate awards system. Most awards should be processed in VETSNET.
- Assuring that all prior payments are put into BDN or VETSNET if already in receipt of benefits. RVSR backfills award. Manual adjustments may be required.
- Generating an award document.
- Preparing a notification letter.
- Annotating the award with the presumptive condition.
- Signing the award

SVSR Responsibilities:

- Reviewing the award and notification letter for accuracy.
- Co-signing the award.
- Assuring that a third level review is performed prior to award authorization, in cases involving retroactive payments greater than \$25,000.
- Sending the file for review by the *Nehmer* Subject Matter Expert (SME) when selected for quality review.
- Submitting copies of the memorandum for the record and the Payment History Inquiry Screen upon request by OGC.
- Incorporating a copy of the database into the file

Appendix 20 – Training Guide Revisions

	Location	Change
1	Exam Templates	Added new templates
2	Page 28 - "Some examples..."	Added statement beginning, "Verified in-country Vietnam..."
3	Page 24 - "Service" section	Added an example of no Vietnam service
4	Page 28 - Example 2	Removed reference to no diagnosis
5	Page 29 - Example 4: "A slightly..."	Second paragraph references no diagnosis
6	Page 29 - Note	Removed reference to usage of no diagnosis memo in the note
7	Page 30 - Examples, bullet 1	No diagnosis
8	Page 70 - Memo	Removed no diagnosis memo
9	Page 47 - Appendix 4	Removed the table and add new table, add page numbers 84-90 to instructions
10	Page 42 - Appendix 2	Added new vessels. Reformatted existing vessel lists
11	Page 23 - Claims Folder Review	Revised section
September Updates		
12	Page 24 - "Development" section	Addition of text about development
13	Page 143 - Appendix 17	SME Checklist and instructions
14	Page 83 - Appendix 8	Addition of the Disability Benefits Questionnaires
15	Page 114 - Appendix 13	Revised EP 687 worksheet and report
16	Page 126 - Appendix 14	Revised EP 687 report
17	Page 129 - Appendix 15	Addition of EP 681 worksheet
18	Page 139 - Appendix 16	Addition of EP 681 report
19	Page 147 - Appendix 18	Moved Footnote 1: Need for Amendment to 38 C.F.R. § 3.816 Regarding <i>Nehmer</i> Claims
20	Page 152 - Appendix 19	Moved VSR and SVSR Responsibilities
21	Page 153 - Appendix 20	Moved Training Guide Revisions
22	Page 15 - "Readjudication Requirements" section	Addition of "Adjudication" to title
23	Page 8 - "Background"	Rewrote text re: number of claims denied

	Location	Change
	section	
24	Page 16 - "Eligibility Requirements" section	Addition of 8/31/10
25	Page 17 - "Claims for Benefits" section	Addition of 8/31/10
26	Page 22 - " <i>Nehmer</i> Database" section	Addition of text discussing the Adjudication database
27	Page 22 - "End Product Control" section	Addition of text re: EP 681
28	Page 40 - New Section	Addition of the "SME Review" section
29	Page 51 - Appendix 4	Addition to instructions
30	Page 42 - Appendix 1	Added dates to IHD, PD and HCL on the List of Presumptive Conditions in 38 C.F.R. § 3.816
January/February Updates		
31	Page 12 – " <i>Nehmer</i> vs. Traditional Claims Comparison"	Deleted the sentence, "No right to reimbursement for the one who bore the last expenses" in the "Eligible Payees" row of the chart
32	Page 14 – "Definition of Ischemic Heart Disease"	Addition of the sentence and hyperlink, " <u><i>Please see the Ischemic Heart Disease PowerPoint for further information, which is linked to the Training Letter at Rating IHD.</i></u> "
33	Page 17- 18 - "Service in the Republic of Vietnam" section	Revised text: Bullet 2 – Changed "In the..." to "Aboard vessels operating..." Bullet 3 – Changed "In" to "Aboard" and added "...and they provide..." Bullet 4 – Changed "In waters..." to "Aboard vessels on..." Revised sentence beginning "For a list of APOs that are verified..." to "See Appendix 4 for a list of Vietnam Era..."
34	Page 19 – 20 - "Claims for Benefits" section	Added six paragraphs. These paragraphs begin with the following sentences: Paragraph 1 – "It is not the case that medical records..." Paragraph 2 – "This rule results..." Paragraph 3 – "This provision resulted..." Paragraph 4 – "Example 1: The Veteran filed a claim..." Paragraph 5 – "Example 2: The Veteran filed a claim..." Paragraph 6 – "A good way to explain the rule is as follows: If..."
35	Page 22 - "Claims for Benefits: Examples of Claims" section	Revised Example 3. Removed the sentence, "Below are slightly different modifications of the above scenario..." and two paragraphs. These paragraphs begin with "For example, if the records diagnosing HCL" and "Another slight variation

	Location	Change
		would exist..." Additional language added to promote clarity and address concerns raised by NVLSP. Please carefully review the revised language.
36	Page 26 – "Claims Folder Review" section	Deleted the sentence " NOTE: If no additional development is required, send the MAP-D Notification/Development Paragraphs for <i>Nehmer</i> to the class member (See Appendix 11)."
37	Page 26 – "Development" section	<p>Deleted the sentences "Use MAP-D to generate the development letters" and "See Appendix 12 for the appropriate paragraphs to use in development letters."</p> <p>Added "Use the Initial <i>Nehmer</i> Notice Letter found in Appendix 12 and add any development paragraphs that may be necessary" to the paragraph beginning. "Development may be required..."</p> <p>Deleted the paragraph, "Be sure to use considerate language when developing these claims, especially in death cases. Most cases identified as <i>Nehmer</i> claims have been denied many years ago."</p>
38	Page 30 – "Memorandum for the Record" section	<p>Deleted the sentence, "A notice letter is not sent to the individual."</p> <p>Revised the sentence, "See Appendix 7 for sample memorandums for the record" to "See Appendix 10 for examples of the no claim and no Vietnam service memorandums for the record."</p> <p>Addition of the paragraph beginning, "In addition to completing the memorandum for the record, VA will also send a memorandum notice letter to all individuals whose cases are disposed of by a memorandum for the record."</p>
39	Page 30 – "Memorandum for the Record" section	Deleted the paragraph " NOTE: The memorandum for the record that appear in Appendix 7 are modifications of an actual form used in previous <i>Nehmer</i> readjudications. For the purposes of this <i>Nehmer</i> review, use the memorandums as shown with no form number. In no instance, when using these forms, should there be any reference made to rating."
40	Pages 33 - "Total Disability Based on Individual Unemployability (TDIU)"	Removal of second bullet point, "If the RVSR has further questions, please e-mail VAVBAWAS/CO/NEHMER."
41	Page 33 -35 "Total	Addition of a subsection titled "Extraschedular NSC Pension

	Location	Change
	Disability Based on Individual Unemployability (TDIU)" section	Conversion to Total Disability Ratings Based on Individual Unemployability." Headings for this subsection include Question Presented, Background, Analysis and Conclusion. Note: The information in this subsection provides additional guidance and clarity regarding TDIU adjudications and should be read carefully
42	Page 36 - "Claims for Service Connection: Evidence and Evidentiary" section	Revised sentence in the "Evidence and Evidentiary Basis" subsection from "The Evidence section must be a clear and concise inventory of all evidence considered in arriving at the decision" to "The Evidence section must contain a detailed, chronological listing of all evidence considered in arriving at the decision, but does not have to document "every" piece of evidence in the record if such evidence is completely unassociated with the <i>Nehmer</i> claim."
43	Page 40 – "Authorization" section	Deleted the paragraph, "A notification letter is not required if a memorandum for the record is prepared by the RVSR. Clear the pending EP. Update the <i>Nehmer</i> Database."
44	Page 45 – "Sending Documents to OGC"	Deleted the subsection
45	Page 45 – 46 - " <i>Nehmer</i> Case Review and Service Connection for Diseases Associated with Herbicide Exposure as Described in 38 CFR 3.307(a)(6)" section	Addition of the entire section to provide additional guidance distinguishing presumptive service connection under <i>Nehmer</i> with direct service connection based on exposure to herbicides outside of the Republic of Vietnam.
46	Page 46 – "Requests for Exclusion from the <i>Nehmer</i> Class" section	Addition of the section beginning, "VA is required under the <i>Nehmer</i> Stipulation..."
47	Page 49 – Appendix 2	Changed the title from "Information on Vietnam Naval Operations" to "Navy and Coast Guard Ships Associated with Service in Vietnam and Exposure to Herbicide Agents." All of the previous text and charts in this section were deleted and replaced with new text and charts
48	Page 60 - Appendix 4	Changed the title from "List of APOs for Verification of RVN Service" to "List of Army Post Office (APO) Numbers for Assisting with Verification of RVN Service." Deleted the sentence beginning, "The following APO's have been verified..." and replaced it with a paragraph beginning, "The following Vietnam Era Asian..."
49	Page 69 - Appendix 6	Removal of reference to the <i>Nehmer</i> Central Office mailbox from the Compensation and Pension Service contact information
50	Page 78 - Appendix 7	Revised the sentences in the "Example Rating Decision for

	Location	Change
		Service-Connected Death Grant with No Prior Grant.” Section “ <u>1. Service connection for the cause of the Veteran’s death, for purposes of entitlement to retroactive benefits</u> ” was revised from “As such, service connection for the cause of the Veteran’s death is now granted, effective from [date]. [Reason for effective date]” to “As such, service connection for the cause of the Veteran’s death is now granted.”
51	Page 79 – Appendix 7	Deleted the “Example Rating Decision for Service-Connected Death Grant with Prior Grant (claim received within one year of Veteran’s death)”
52	Page 80 – Appendix 7	Deleted a sentence in the “Example Rating Decision for Service-Connected Death Grant with Prior Pension Grant.” The sentence “The effective date is [date VA Form 21-534 claim was received], the date your claim for non service-connected benefits was submitted” from the section titled “ <u>1. Service connection for the cause of the Veteran’s death, for purposes of entitlement to retroactive benefits.</u> ”
53	Page 85 – Appendix 7	Deleted the sentence in the “Example Rating Decision for Service-Connected Death Grant and Retroactive Compensation.” The sentence, “The effective date of service connection for the Veteran’s death is [insert date of receipt of DIC claim], the date your original claim for service connection for your [survivor’s relationship] death was received” was deleted from the section titled “ <u>2. Service connection for the cause of the Veteran’s death, for purposes of entitlement to retroactive benefits.</u> ”
54	Page 86 – Appendix 7	Moved the “Example Memorandum for the Record for No Vietnam Service” and the “Example Memorandum for the Record for No Claim” from Appendix 7 to Appendix 10.
55	Page 100 – 105 - Appendix 10	Addition of the appendix, “Memorandums for the Record and Memorandum Notice Letter” Removed paragraphs in the “Example Memorandum for the Record for No Vietnam Service” beginning, “A systematic review of the Veteran’s claims folder has been conducted...” and “VA has confirmed that the Veteran did not have service...” Replaced with paragraphs beginning, “A review of the claims folder showed no evidence...” and “Nevertheless, to ensure that VA is taking all reasonable steps...”

	Location	Change
		<p>Removed paragraphs in the “Example Memorandum for the Record for No Claim beginning, “A systematic review of the Veteran’s claims folder has been conducted...” and “VA has confirmed that the Veteran/Widow did not file a claim...”</p> <p>Replaced with paragraphs beginning, “A review of the claims folder showed neither a prior claim for benefits...” and “Nevertheless, to ensure that VA is taking all reasonable steps...”</p> <p>Addition of the “Memorandum Notice Letter”</p>
56	Page 106 – Appendix 11	Deleted the entire appendix, “MAP-D Notification/Development Paragraphs for <i>Nehmer</i> ”. Replaced by “The Cardiovascular System in 38 C.F.R § 4.100 (Prior to January 12, 1998),” formerly Appendix 10
57	Page 114 – Appendix 12	Addition of the appendix, “Initial <i>Nehmer</i> Notice Letter”
58	Page 118 - Appendix 13, formerly Appendix 12	<p>Revisions to the <i>Nehmer</i> Readjudication (EP 687) Review Worksheet 1:</p> <p>Removed questions 42, 42c, 42d, 42e, 43 from the Worksheet due to the addition of the <i>Nehmer</i> SME Quality Review that cover these questions in greater detail</p> <p>Changed the title of the section, “Quality Review” on page 122 to “Authorization Review”</p> <p>Added the dates for IHD, Parkinson’s and B-cell leukemias in the “For Information Purposes Only (Static Fields)” section</p>
59	Page 129 - Appendix 14, formerly Appendix 13	Deleted all of the text in the <i>Nehmer</i> Readjudication Data Collection for EP 687 and replaced with a table
60	Page 130 - Appendix 15, formerly Appendix 14	<p>Revisions to the <i>Nehmer</i> Readjudication (EP 681) Review Worksheet 2:</p> <p>Removed questions 36, 36C, 36C, 36D, 36E, 37 from the Worksheet due to the addition of the <i>Nehmer</i> SME Quality Review that cover these questions in greater detail</p> <p>Changed the title of the section, “Quality Review” to “Authorization Review”</p> <p>Added the dates for IHD, Parkinson’s and B-cell leukemias in the “For Information Purposes Only (Static Fields)” section</p>
61	Page 139 - Appendix 16, formerly Appendix 15	Deleted all of the text in the <i>Nehmer</i> Readjudication Data Collection for EP 681 and replaced with a table
62	Page 141 - Appendix 17, formerly Appendix 16	<p>Revised Rating SME Checklist:</p> <p>#1 – N/A is no longer allowed for this question</p> <p>#25 – Changed question from “Are other issue(s), <i>Nehmer</i> and/or any other, properly addressed?” to “Are all <i>Nehmer</i></p>

	Location	Change
		issue(s)/comment(s) addressed and closed in this rating?"
63	Page 143 - Appendix 17, formerly Appendix 16	Revised Authorization SME Checklist: #12 Changed question from "Are other issue(s), <i>Nehmer</i> and/or any other, properly addressed?" to "Are all <i>Nehmer</i> issue(s)/comment(s) addressed and closed in this rating?"
64	Pages 83 – 89 - Appendix 8	Removed Disability Benefit Questionnaires and provided the direct link so that the latest DBQ can be accessed

TRAINING CASE SCENARIOS

VSR Scenario 1

You receive a file for review. The DD Form 214 shows the Veteran served in the Navy from June 1, 1962, to August 30, 1973. The file also includes a DPRIS request response showing the Veteran served in-country in the Republic of Vietnam from August 10, 1970, to November 30, 1972.

The Veteran filed an original claim for service connection for IHD on April 3, 1998. Medical evidence was submitted showing a diagnosis of IHD. The Veteran was denied service connection and notified of the decision on August 17, 1998.

On December 23, 1998, the Veteran then filed a claim for Pension benefits. The Veteran listed IHD under conditions that contributed to his unemployability. Medical evidence dated December 20, 1998, was submitted with a Pension claim showing chronic congestive heart failure. Pension was granted effective December 23, 1998, with diagnostic code 7005.

The Veteran passed away on January 27, 1999, with the secondary cause of death listed as Ischemic heart disease (IHD).

September 20, 2007, the surviving spouse of the Veteran filed a claim for DIC and was denied and notified on February 19, 2008, due to lack of evidence showing that IHD was caused by service.

VSR has confirmed that the surviving spouse is living and has not remarried since the death of the Veteran. Evidence of record shows they were married from 1990 until the date of death. No children are of record.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there any retroactive benefits payable?
- 3) What effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) What is the effective date for DIC, if applicable?
- 5) Is any additional development necessary? If so, what development is required? If not, what is the next action?

VSR Scenario 2

A case arrives at your desk for review. The BIRLS VID screen shows that the Veteran is currently alive.

A review of the record shows that the Veteran served in-country in the Republic of Vietnam and has a combined rating of 30 percent without dependents. The Veteran's current rating code sheet shows that she is rated 10 percent for type II diabetes mellitus (Agent Orange) and 20 percent for a left knee condition. Both conditions were granted effective May 17, 2002, the date the Veteran claimed these conditions.

The Veteran filed a claim for hairy cell leukemia (HCL) on January 10, 1985. The Veteran's claim was denied and notified on September 12, 1985, because the condition was not incurred nor aggravated by service and the condition was not caused by herbicide exposure. Diagnostic code 7700 was used to prepare the rating. Evidence received on January 10, 1985, shows the Veteran was diagnosed with inactive HCL with original diagnosis on November 12, 1984.

Questions

- 1) Is this a *Nehmer* case?
- 2) Is the Veteran entitled to retroactive compensation?
- 3) What effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is any additional development necessary? If so, what development is required? If not, what is the next action?

VSR Scenario 3

You receive a file for review. A DD Form 214 in the file shows the Veteran served in the Navy from February 2, 1960, to May 31, 1981, and that the Veteran received a Vietnam Service Medal. The dates of service were verified using a DPRIS request; however, in-country service was not verified.

The Veteran filed an original claim for service connection for PD on March 29, 2005. Medical evidence was submitted showing a diagnosis of PD. The Veteran was denied service connection on July 10, 2005, under diagnostic code 8002.

A review of the file shows that the Veteran passed away on October 8, 2006, with the contributory cause of death listed as Parkinson's disease (PD). The Veteran was not in receipt of benefits and did not have a claim pending at time of death.

A claim for burial benefits was submitted on October 15, 2006, from Jane Doe. The application indicated that she was not filing a claim for service-connected death. Jane also listed herself as the surviving spouse on the application. Evidence of record shows that Jane was the surviving spouse since 1979 and has not remarried since the date of death. No children are of record. VA did not send VA Form 21-534, Application for DIC, Death Pension & Accrued Benefits by Surviving Spouse or Child.

The claim for burial benefits was denied as the Veteran was not in receipt of compensation or pension benefits. The death certificate shows the address of the deceased to be the same as that of the surviving spouse.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there retroactive benefits?
- 3) What effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is Jane Doe entitled to service connected burial benefits?
- 5) What is the effective date for DIC, if applicable?
- 6) Is any additional development necessary? If so, what development is required? If not, what is the next action?

VSR Scenario 4

A case arrives at your desk for review. The BIRLS VID screen shows that the Veteran is currently alive. A review of the record shows that the Veteran served in-country in the Republic of Vietnam.

The Veteran previously filed a claim for Pension benefits on May 10, 2009. On the Veteran's VA Form 21-526 the Veteran noted she was applying for Pension benefits only. The Veteran stated in the remarks section that her ischemic heart disease, which is due to service, is keeping her from working. A rating decision dated September 19, 2009, granted pension benefits using diagnostic code 7007 as the medical evidence showed the Veteran had a left ventricular dysfunction with an ejection fraction of 20 percent.

Questions

- 1) Is this a *Nehmer* case?
- 2) Is the Veteran entitled to retroactive compensation?
- 3) What effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is any additional development necessary? If so, what development is required? If not, what is the next action?

VSR Scenario 5

A review of the record shows that the Veteran served in-country in the Republic of Vietnam.

The Veteran filed a claim for type II diabetes mellitus and hypertensive vascular disease in April 7, 1994. The Veteran was denied service connection for both conditions on September 21, 1994, using diagnostic codes 7913 and 7101. The evidence of record showed that the Veteran had a diagnosis of both conditions. Evidence showed that the Veteran was hospitalized 2 times for diabetes mellitus in 1993 for hypoglycemia. The Veteran was also on daily injections of insulin and on a restricted diet. The records also showed that the Veteran's blood pressure was 210/115 mmHg.

The Veteran filed a claim to reopen his type II diabetes claim and filed a new claim for ischemic heart disease on August 28, 1996. The claim was again denied on February 15, 1997. The evidence showed that the Veteran required 2 daily injections of insulin and now required daily dialysis due to chronic renal failure. Additionally, the evidence showed that a workload of 2 Metabolic Equivalent (METs) resulted in dyspnea, fatigue, and dizziness and the Veteran's diastolic pressure was predominantly measured at 132 mmHg.

A review of the file shows that the Veteran passed away on October 8, 1998, with the primary cause of death listed as end-stage renal disease, with contributing cause of death as diabetes mellitus. The surviving spouse filed a claim for death pension benefits on December 8, 1998. The surviving spouse was granted death pension and is still receiving benefits. The evidence of record shows that the spouse was married continuously to the Veteran from May 8, 1981, until the Veteran's death. The record also shows that they never had children. The spouse has not remarried.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there retroactive benefits?
- 3) What effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is surviving spouse entitled to additional death benefits? If so, what is the benefit and what is the effective date?
- 5) Is any additional development necessary? If so, what development is required? If not, what is the next action?

RVSR Scenario 1

Rater Joe receives a file that is marked ready for decision. The DD Form 214 shows the Veteran served in the Navy from June 1, 1962, to August 30, 1973. The file also includes a DPRIS request response showing dates of service in the Republic of Vietnam from August 10, 1970, to November 30, 1972.

The Veteran filed an original claim for service connection for IHD on April 3, 1998. Medical evidence was submitted showing a diagnosis of IHD. Evidence shows that, at the time of the claim, continuous medication was required and a workload of 8 Metabolic Equivalents (METs) resulted in dyspnea, fatigue, and dizziness. The Veteran was denied service connection and notified of the decision on August 17, 1998.

On December 23, 1998, the Veteran then filed a claim for Pension benefits. The Veteran listed IHD under conditions that contributed to his unemployability. Medical evidence dated December 20, 1998, was submitted with a Pension claim showing chronic congestive heart failure. Pension was granted effective December 23, 1998, with diagnostic code 7005.

The Veteran passed away on January 27, 1999, with the secondary cause of death listed as ischemic heart disease (IHD).

On, September 20, 2007, the surviving spouse of the Veteran filed a claim for Dependency and Indemnity Compensation (DIC) and was denied and notified on February 19, 2008, due to lack of evidence showing that IHD was caused by service.

VSR has confirmed that the surviving spouse is living and has not remarried since the death of the Veteran. Evidence of record shows they were married from 1990 until the date of death. No children are of record.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there any retroactive benefits payable?
- 3) What percentage(s) and effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) What is the effective date for DIC, if applicable?
- 5) What is the next action?

RVSR Scenario 2

A case arrives at your desk for a rating decision. The BIRLS VID screen shows that the Veteran is currently alive.

A review of the record shows that the Veteran served in-country in the Republic of Vietnam and has a combined rating of 30 percent without dependents. The Veteran's current rating code sheet shows that she is rated 10 percent for type II diabetes mellitus (Agent Orange) and 20 percent for a left knee condition. Both conditions were granted effective May 17, 2002, the date the Veteran claimed these conditions.

The Veteran filed a claim for hairy cell leukemia (HCL) on January 10, 1985. The Veteran's claim was denied and notified on September 12, 1985, because the condition was not incurred nor aggravated by service and the condition was not caused by herbicide exposure. Diagnostic code 7700 was used to prepare the rating. Evidence received on January 10, 1985, shows the Veteran was diagnosed with inactive HCL with original diagnosis on November 12, 1984.

Questions

- 1) Is this a *Nehmer* case?
- 2) Is the Veteran entitled to retroactive compensation?
- 3) What percentage(s) and effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) What is the next action?

RVSR Scenario 3

You receive a file identified as ready to rate. A DD Form 214 in the file shows the Veteran served in the Navy from February 2, 1960, to May 31, 1981, and that the Veteran received a Vietnam Service Medal. The dates of service were verified using a DPRIS request; however, in-country service was not verified.

The Veteran filed an original claim for service connection for PD on March 29, 2005. Medical evidence was submitted showing a diagnosis of PD. The Veteran was denied service connection on July 10, 2005, using diagnostic code 8002.

A review of the file shows that the Veteran passed away on October 8, 2006, with the contributory cause of death listed as Parkinson's disease (PD). The Veteran was not in receipt of benefits and did not have a claim pending at time of death.

A claim for burial benefits was submitted on October 15, 2006, from Jane Doe. The form indicated that she was not filing a claim for service-connected death. Jane also listed herself as the surviving spouse on the application. Evidence of record shows that Jane was the surviving spouse since 1979 and has not remarried since the date of death. No children are of record.

The claim for burial benefits was denied on February 20, 2006, as the Veteran was not in receipt of compensation or pension benefits and the location of death was noted as the decedent's residence. VA sent Jane VA Form 21-534 and the form was not returned.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there retroactive benefits?
- 3) What percentage(s) and effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is Jane Doe entitled to burial benefits?
- 5) What is the effective date for DIC, if applicable?
- 6) What is the next action?

RVSR Scenario 4

A case arrives at your desk for a rating decision. The BIRLS VID screen shows that the Veteran is currently alive. A review of the record shows that the Veteran served in-country in the Republic of Vietnam.

The Veteran previously filed a claim for Pension benefits on May 10, 2009. On the Veteran's VA Form 21-526 the Veteran noted she was applying for Pension benefits only. The Veteran stated in the remarks section that her ischemic heart disease, which is due to service, is keeping her from working. A rating decision dated September 19, 2009, granted pension benefits using diagnostic code 7007 as the medical evidence showed the Veteran had a left ventricular dysfunction with an ejection fraction of 20 percent.

Questions

- 1) Is this a *Nehmer* case?
- 2) Is the Veteran entitled to retroactive compensation? Yes, a claim for pension is a claim for compensation. .
- 3) What percentage(s) and effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) What is the next action?

RVSR Scenario 5

You receive a file for a rating decision. A review of the record shows that the Veteran served in-country in the Republic of Vietnam.

The Veteran filed a claim for type II diabetes mellitus and hypertensive vascular disease in April 7, 1994. The Veteran was denied service connection for both conditions on September 21, 1994, using diagnostic codes 7913 and 7101. The evidence of record showed that the Veteran had a diagnosis of both conditions. Evidence showed that the Veteran was hospitalized 2 times for diabetes mellitus in 1993 for hypoglycemia. The Veteran was also on daily injections of insulin and on a restricted diet. The records also showed that the Veteran's blood pressure was 210/115 mmHg.

The Veteran filed a claim to reopen his type II diabetes claim and filed a new claim showing a diagnosis of ischemic heart disease on August 28, 1996. The claim was again denied on February 15, 1997. The evidence showed that the Veteran required 2 daily injections of insulin and now required daily dialysis due to chronic renal failure. Additionally, the evidence showed that a workload of 2 Metabolic Equivalents (METs) resulted in dyspnea, fatigue, and dizziness and the Veteran's diastolic pressure was predominantly measured at 132 mmHg.

A review of the file shows that the Veteran passed away on October 8, 1998, with the primary cause of death listed as end-stage renal disease, with contributing cause of death as diabetes mellitus. The surviving spouse filed a claim for death pension benefits on December 8, 1998. The surviving spouse was granted death pension and is still receiving benefits. The evidence of record shows that the spouse was married continuously to the Veteran from May 8, 1981, until the Veteran's death. The record also shows that they never had children. The spouse has not remarried.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there retroactive benefits?
- 3) What percentage(s) and effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is surviving spouse entitled to additional death benefits? If so, what is the benefit?
- 5) What is the next action? Prepare rating and send to Authorization for award.