

Blue Water Navy Vietnam Veterans Association



January 30, 2009

Mr. Richard J. Hipolit
Assistant General Counsel
Department of Veterans Affairs
Office of the General Counsel
Washington, DC 20420

Dear Mr. Hipolit,

In response to your letter of January 6, 2009, I would like to submit the following information for your review and consideration. It is the basis of a request for change in the internal VA policies regarding assignment of service connection for NHL based on 38 CFR 3.313. I believe it will broaden and simplify the current distinctions used to adjudicate compensation claims related to NHL. Despite your statement indicating there is a consistent and unified definition used by all Regional Offices to adjudicate claims for NHL, this past month has shown us that without intense and constant intervention by Congressional staff members monitoring a particular claim, the proper adjudication policy procedures are not being followed and directives from VA Headquarters are being ignored.

There is no wonder at all as to how the VA Compensation Division seems misguided and confused, and in turn misguides and confuses the veterans it serves. Contradictory information abounds. Just one example is a web page on the VA's own MyHealtheVet web page entitled "Cellular classification of non-Hodgkin's lymphoma, REAL/WHO classification" which provides a list showing the categories of diseases which are labeled as being a non-Hodgkins lymphoma (NHL). I also have a letter from the VA Regional Office in Philadelphia, dated January 26, 2009, explaining that the only categories of NHL that are covered for compensation are those that appeared on the 1994 version of the REAL/WHO classification.

The adjudication of many veteran claims for Agent Orange-related cancers is incorrect based on the existing science of identifying and categorizing lymphoma and leukemia diseases. The VA adamantly separates any claims for Non-Hodgkin's Lymphoma (NHL) and claims for Chronic Lymphocytic Leukemia (CLL). Medical research now shows that there are indeed instances where CLL is identified as and treated as a non-Hodgkin's lymphoma. What perhaps has confused this issue is that the same type of cellular structure, CLL, is also a disease that falls outside of the classification non-Hodgkin's lymphoma. However, the distinction can easily be resolved by examining cell structure, and one quickly finds that B-cell chronic lymphocytic leukemia and B-cell small lymphocytic lymphoma are simply different manifestations of the same neoplasm.

However, clear distinctions by the attending oncologist of the relationship between CLL and NHL, written in the language of a narrow and outmoded understandable by the VA, are not always being provided to the VA Claim Raters along with the medical diagnoses. Nor should they need to be. The assumption is that the VA employees have knowledge of all the manifestations of NHL. This is obviously not the case.

Non-Hodgkin's lymphoma (NHL) is actually the name of a family of cancers that relate directly to the lymph nodes within the human body. There are 35 or more subcategories of NHL cancers at this time. Compensation claim raters for the VA may not be fully aware of this vast number of cancers that should be considered NHL. In fact, when listing the approved cancers for Agent Orange compensation (dioxin poisoning), that list often just says "NHL." However, on the VA's own web site at <http://www.healthwise.net/myhealthvet/Content/StdDocument.aspx?DOCHWID=tv7179&SECHWID=tv7179-sec>, a clear picture is given of the Non-Hogkins Lymphomas, along with their clinical names which often appear on the veteran's medical diagnosis.

As regards CLL, it is reported by the American Cancer Society to be a lymphoma that occurs about 25% of the time for all lymphomas. There is a close relationship between CLL and SLL or small lymphocytic leukemia. Neither of these diseases is curable and is therefore always active. Most oncologists are reluctant to say this condition is ever "inactive" for the purpose of classification for 0% VA service connection.

What differentiates CLL when it falls under the family of NHL cancer is a question of where the disease initially began. In the relationship between CLL and SLL, if the disease began in the lymph system, then the resulting disease CLL will be a lymphocytic disease and will therefore fall into the classification of NHL. If, however, the etiology of that disease, or its later migration, was other than the lymph system, such as in the blood or bone marrow, then that instance of CLL would indeed be considered a leukemia and would not fall within the classification of NHL. That classification of cancer would be evident as Hodgkins Disease by the accompanying diagnosis.

At this point in time, as verified in a letter to me on this subject from the assistant General Counsel of the Department of Veterans Administration, all instances of CLL are considered as entirely different conditions than NHL, for purposes of awarding service connection. What strikes me in this description is that NHL seems to be presented as and treated as a single disease by the VA, in spite of their having the correct classifications on their own web site.

In fact, as stated before, there isn't really one disease answering solely to the name "non-Hodgkin's lymphoma". If one were to seek treatment for non-Hodgkin's lymphoma and were to ask an oncologist to provide treatment for that condition, the first thing that would need to be determined would be the identification of the specific type of NHL. Such identification would be critical to the treatment the patient would receive, including the types of drugs or radiation used for treatment.

A way of writing this distinction, as used by many oncologists, is to combine the two acronyms separated by a slash as in CLL/SLL or SLL/CLL. I am aware of several instances where a veteran submitted a claim for CLL/SLL and, even though the medical description may have mentioned NHL somewhere in the diagnosis, and has had that claim denied because this specific disease is not considered by the VA to have any relationship to NHL.

I would like to suggest that section 38 CFR 3.313, which deals with NHL as a presumptive service connected condition, be reviewed and updated to bring it into line with these more modern medical classifications. In his letter to me, Richard J. Hippit, Assistant General Counsel, states the following: "As an initial matter, I would like to clarify that VA regulations do not regard the NHL and chronic lymphocytic leukemia (CLL) as the same condition for purposes of awarding service connection." The actual regulation which mentions classification of either disease into these sub-categories was not given. Nor was I able to find it.

There is no wording, indication, innuendo or other indication in CFR 3.313 that there is any other disease being addressed other than Non-Hodgkins Lymphoma; Non-Hodgkins Lymphoma in whatever form or classification it might appear. NHL may have been known by a single name when the Agent Orange Act of 1991 was written, or earlier in 1990, when 38 CFR 3.313 was codified. But that is not the case now. All the classifications that exist today were present in a diagnosis of NHL in 1990, but it wasn't as finely honed in definition as it is now. It is still the same disease that the CDC found abundant in personnel who served offshore Vietnam in their 1989 study, but it has now been discovered to consist of several types. Exactly which type was referred to by 38 CFR 3.313 is irrelevant. NHL is and always has been NHL, now known to have several sub-categories.

At the time 38 CFR 3.313 was written, it was clear that the intention was to identify NHL as a compensable condition. At that time, perhaps unbeknownst to medical science, NHL was being diagnosed as a catch all for the many conditions which were later broken out as sub-categories under the heading "NHL." Therefore, it would seem reasonable that all subcategories of NHL would logically fall under this initial distinction of NHL. Through additional research, non-Hodgkin's lymphoma was found to be a group of discernible conditions, all of which fall under the category NHL. That is to say, they are definitely not anything that fits into a different category called a Hodgkin's lymphoma. Therefore, all subcategories of NHL which have been identified over the years remain NHL and are covered by the wording and intention of 38 CFR 3.313.

For the VA to continue with its distinction separating all forms of CLL from any relationship to NHL is simply bad science, unenlightened medicine and faulty linguistics. A review of literature or textbooks addressing lymphoma cancers and leukemia will readily show that there are indeed configurations currently identified as CLL which are in fact diseases that are NHL and should be considered by the VA as NHL under 38 CFR 3.313.

It shouldn't take too much investigation on the part of the VA to clarify and remedy this situation. Further, it would on the surface appear to be quite easy and logical to designate CLL/SLL, which began in the lymph system, as a non-Hodgkin's lymphoma and therefore presumptively service-connected under 38 CFR 3.313.

I submit this information as a request that the VA's narrow and erroneous interpretation of 38 CFR 3.313 be amended to include all members of the family NHL, which, in some situations, includes the disease of chronic lymphocytic leukemia (CLL). I further request that reference to 38 CFR 3.313 be updated to specifically state that all subcategories of NHL, including those yet to be discovered, be specifically mentioned as falling under the designation NHL for which 38 CFR 3.313 was originally written and for which offshore personnel are compensated.

I thank you in advance for your attention to this matter. Bringing the regulations and procedures of the VA up to the standards of modern technology should be our common goal. The Blue Water Navy Vietnam Veterans Association is happy to assist by pointing out those areas where change is necessary.

Sincerely,

John Paul Rossie, Chief Executive Officer
Blue Water Navy Vietnam Veterans Association
www.bluewaternavy.org

cc:

Patrick W. Dunne, Veterans Benefits Administration
Senator Daniel Akaka, Chairman, Senate Veteran Affairs Committee
Senator Kirsten Gillibrand, Member, Senate Armed Services Committee
Congressman Bob Filner, Chairman, House Veteran Affairs Committee