



National Veterans Affairs and Rehabilitation Commission

1608 K Street, N.W. • Washington, D.C. 20006

K. Robert Lewis, Chairman - Connecticut

Barry Searle, Director - Pennsylvania

19-09

September 9, 2009

## **VA publishes Final Regulation on Presumption of Service Connection for Osteoporosis for Former Prisoners of War**

### **Background**

The Department of Veterans Affairs (VA) published a final rule on Friday, August 31, 2009 amending its adjudication regulations to establish a presumption of service connection for osteoporosis for former Prisoners of War (POWs) who were detained or interned for at least 30 days and whose osteoporosis is at least 10 percent disabling. Effective September 28, 2009 the amendment implements a decision by the Secretary to establish such a presumption based on scientific studies and as provided by Public Law 110-389.

VA is additionally amending its adjudication regulations to establish a presumption of service connection for osteoporosis for POWs who were detained or interned for any period of time, have a diagnosis of posttraumatic stress disorder (PTSD), and whose osteoporosis is at least 10 percent disabling. This amendment reflects statutory provisions of the Veterans' Benefits Improvement Act of 2008.

On January 14, 2009, VA had published a proposed regulation/rule in the Federal Register (74 FR 2016) to amend the 38 Code of Federal Regulation (CFR) § 3.309(c)(2) to establish a presumption of service connection for osteoporosis for POWs who were detained or interned for at least 30 days and whose osteoporosis is at least 10 percent disabling. Interested persons were invited to submit written comments on or before February 13, 2009.

The only change to the proposed regulation made in the final regulation is the the addition of the following information:

*As noted above, [VA is] including the applicability dates in the amended regulations to avoid confusion. The amendment regarding a presumption of service connection for*

*osteoporosis for POWs with PTSD at 38 CFR 3.309(c)(1) is mandated by section 106 of Public Law 110-389 and is therefore to be applied retroactively to all applications for benefits that are received by VA on or after October 10, 2008, the effective date of Public Law 110-389, or that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of this rule. In accordance with 38 U.S.C. 5110(g), the effective date of benefits awarded under § 3.309(c)(1) cannot be earlier than the effective date of Public Law 110-389 or the date 1 year prior to the date of application, whichever is later.*

This change is reflected as the final rule on this matter and the changes. Further changes implemented by this final rule include the following changes to regulations surrounding Dependency Indemnity Compensation (DIC) benefits:


Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

- 1. The authority citation for part 3, subpart A continues to read as follows:  
Authority: 38 U.S.C. 501(a), unless otherwise noted.
- 2. Amend § 3.309(c) as follows:
  - a. In paragraph (c)(1), in the list of diseases, add “On or after October 10, 2008, Osteoporosis, if the Secretary determines that the veteran has posttraumatic stress disorder (PTSD).” after “Stroke and its complications.”.
  - b. In paragraph (c)(2)(ii), in the list of diseases, add “On or after September 28, 2009, Osteoporosis.” after “Cirrhosis of the liver.”.
  - c. Revising the authority citation.

The revision also adds this condition as appropriate under: § 3.309 Disease subject to presumptive service connection.

Service Officers accredited by The American Legion should take the appropriate measures with regards to implementing these changes in their advocacy for veterans with applicable claims.

\*\*\*\*\*

  
BARRY A. SEARLE, Director  
National Veterans Affairs and  
Rehabilitation Commission