§ 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.

(a) General. A chronic, tropical, prisoner-of-war related disease, or a disease associated with exposure to certain herbicide agents listed in §3.309 will be considered to have been incurred in or aggravated by service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in §3.309(a) will be considered chronic.

(1) Service. The veteran must have served 90 days or more during a war period or after December 31, 1946. The requirement of 90 days' service means active, continuous service within or extending into or beyond a war period, or which began before and extended beyond December 31, 1946, or began after that date. Any period of service is sufficient for the purpose of establishing the presumptive service connection of a specified disease under the conditions listed in §3.309(c) and (e).

(2) Separation from service. For the purpose of paragraph (a)(3) and (4) of this section the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period. In claims based on service on or after January 1, 1947, the date of separation will be the date of discharge or release from the period of service on which the claim is based.

(3) Chronic disease. The disease must have become manifest to a degree of 10 percent or more within 1 year (for Hansen's disease (leprosy) and tuberculosis, within 3 years; multiple sclerosis, within 7 years) from the date of separation from service as specified in paragraph (a)(2) of this section.

(4) Tropical disease. The disease must have become manifest to a degree of 10 percent or more within 1 year from date of separation from service as specified in paragraph (a)(2) of this section, or at a time when standard accepted treatises indicate that the incubation period commenced during such service. The resultant disorders or diseases originating because of therapy administered in connection with a tropical disease or as a preventative may also be service connected.

(5) Diseases specific as to former prisoners of war. The diseases listed in §3.309(c) shall have become manifest to
a degree of 10 percent or more at any
time after discharge or release from ac-
tive service.

(Authority: 38 U.S.C. 1112)

(6) Diseases associated with exposure to
certain herbicide agents. (i) For the pur-
poses of this section, the term “herbi-
cide agent” means a chemical in an
herbicide used in support of the United
States and allied military operations
in the Republic of Vietnam during the
period beginning on January 9, 1962,
and ending on May 7, 1975, specifically:
2,4-D; 2,4,5-T and its contaminant
TCDD; cacodylic acid; and picloram.

(Authority: 38 U.S.C. 1116(a)(4))

(ii) The diseases listed at § 3.309(e)
shall have become manifest to a degree
of 10 percent or more at any time after
service, except that chloracne or other
acneform disease consistent with
chloracne, porphyria cutanea tarda,
and early-onset peripheral neuropathy
shall have become manifest to a degree
of 10 percent or more within a year
after the last date on which the vet-
eran was exposed to an herbicide agent
during active military, naval, or air
service.

(iii) A veteran who, during active
military, naval, or air service, served
in the Republic of Vietnam during the
period beginning on January 9, 1962,
and ending on May 7, 1975, shall be pre-
sumed to have been exposed during such
service to an herbicide agent, un-
less there is affirmative evidence to es-
tablish that the veteran was not ex-
posed to any such agent during that
service. The last date on which such a
veteran shall be presumed to have been
exposed to an herbicide agent shall be
the last date on which he or she served
in the Republic of Vietnam during the
period beginning on January 9, 1962,
and ending on May 7, 1975. “Service in
the Republic of Vietnam” includes
service in the waters offshore and serv-
ice in other locations if the conditions
of service involved duty or visitation in
the Republic of Vietnam.

(iv) A veteran who, during active
military, naval, or air service, served
between April 1, 1968, and August 31,
1971, in a unit that, as determined by
the Department of Defense, operated in
or near the Korean DMZ in an area in
which herbicides are known to have
been applied during that period, shall
be presumed to have been exposed dur-
ing such service to an herbicide agent,
unless there is affirmative evidence to
establish that the veteran was not ex-
posed to any such agent during that
service. See also 38 CFR 3.814(c)(2).

(Authority: 38 U.S.C. 501(a), 1116(a)(3), and
1821)

(b) Evidentiary basis. The factual basis
may be established by medical evi-
dence, competent lay evidence or both.
Medical evidence should set forth the
physical findings and symptomatology
elicited by examination within the app-
licable period. Lay evidence should
describe the material and relevant
facts as to the veteran’s disability ob-
served within such period, not merely
conclusions based upon opinion. The
chronicity and continuity factors out-
lined in § 3.303(b) will be considered.
The diseases listed in § 3.309(a) will be
accepted as chronic, even though diag-
nosed as acute because of insidious in-
ception and chronic development, ex-
cept: (1) Where they result from inter-
current causes, for example, cerebral
hemorrhage due to injury, or active ne-
phritis or acute endocarditis due to
intercurrent infection (with or without
identification of the pathogenic micro-
organism); or (2) where a disease is the
result of drug ingestion or a complica-
tion of some other condition not re-
lated to service. Thus, leukemia will be
accepted as a chronic disease whether
diagnosed as acute or chronic. Unless
the clinical picture is clear otherwise,
consideration will be given as to
whether an acute condition is an exac-
teriation of a chronic disease.

(Authority: 38 U.S.C. 1112)

(c) Prohibition of certain presumptions.
No presumptions may be invoked on
the basis of advancement of the disease
when first definitely diagnosed for the
purpose of showing its existence to a
degree of 10 percent within the applica-
tible period. This will not be interpreted
as requiring that the disease be diag-
nosed in the presumptive period, but
only that there be then shown by ac-
tceptable medical or lay evidence char-
acteristic manifestations of the disease
to the required degree, followed without unreasonable time lapse by definite diagnosis. Symptomatology shown in the prescribed period may have no particular significance when first observed, but in the light of subsequent developments it may gain considerable significance. Cases in which a chronic condition is shown to exist within a short time following the applicable presumptive period, but without evidence of manifestations within the period, should be developed to determine whether there was symptomatology which in retrospect may be identified and evaluated as manifestation of the chronic disease to the required 10 percent degree.

(d) Rebuttal of service incurrence or aggravation. (1) Evidence which may be considered in rebuttal of service incurrence of a disease listed in §3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression “affirmative evidence to the contrary” will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service. As to tropical diseases the fact that the veteran had no service in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption, as may residence during the period in question in a region where the particular disease is endemic. The known incubation periods of tropical diseases should be used as a factor in rebuttal of presumptive service connection as showing inception before or after service.

(2) The presumption of aggravation provided in this section may be rebutted by affirmative evidence that the preexisting condition was not aggravated by service, which may include affirmative evidence that any increase in disability was due to an intercurrent disease or injury suffered after separation from service or evidence sufficient under §3.306 of this part, to show that the increase in disability was due to the natural progress of the preexisting condition.

(Authority: 38 U.S.C. 1113 and 1133)


§ 3.308 Presumptive service connection; peacetime service before January 1, 1947.

(a) Chronic disease. There is no provision for presumptive service connection for chronic disease as distinguished from tropical diseases referred to in paragraph (b) of this section based on peacetime service before January 1, 1947.

(b) Tropical disease. In claims based on peacetime service before January 1, 1947, a veteran of 6 months or more service who contracts a tropical disease listed in §3.309(b) or a resultant disorder or disease originating because of therapy administered in connection with a tropical disease or as a preventative, will be considered to have incurred such disability in service when it is shown to exist to the degree of 10 percent or more within 1 year after separation from active service, or at a time when standard and accepted treatises indicate that the incubation period commenced during active service unless shown by clear and unmistakable evidence not to have been of service origin. The requirement of 6 months or more service means active, continuous service, during one or more enlistment periods.

(Authority: 38 U.S.C. 1133)

[39 FR 34530, Sept. 26, 1974]

§ 3.309 Disease subject to presumptive service connection.

(a) Chronic diseases. The following diseases shall be granted service connection although not otherwise established as incurred in or aggravated by service if manifested to a compensable degree within the applicable time limits under §3.307 following service in a period of war or following peacetime