

other railroad lines owned by Temple, to operate over the line. Temple states that its agreement with TCTR requires that TCTR solicit business over the line and to provide common carrier service for remunerative business. Temple states that in the event TCTR is unable to provide service over the line, Temple will assume the residual common carrier obligation to provide service. Temple requests expedited action on its petition.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b).

Decided: January 10, 2011.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011-639 Filed 1-12-11; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Gulf War and Health, Volume 6, Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority granted by the Persian Gulf War Veterans Act of 1998, Public Law 105-277, title XVI, 112 Stat. 2681-742 through 2681-749 (codified at 38 U.S.C. 1118), has determined that there is no basis to establish any new presumptions of service connection at this time for any of the diseases, illnesses, or health effects discussed in the November 15, 2007, National Academy of Sciences (NAS) report titled, "Gulf War and Health, Volume 6, Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress." This determination does not in any way preclude VA from granting service connection on a direct basis for any disease, including those specifically discussed in this notice, nor does it change any existing rights or procedures.

FOR FURTHER INFORMATION CONTACT: Gerald Johnson, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202)

461-9727. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

The Persian Gulf War Veterans Act of 1998, Public Law 105-277, title XVI, 112 Stat. 2681-742 through 2681-749 (codified at 38 U.S.C. 1118), and the Veterans Programs Enhancement Act of 1998, Public Law 105-368, 112 Stat. 3315, directed the Secretary to enter into an agreement with NAS to review and evaluate the available scientific evidence regarding associations between illnesses and exposure to toxic agents, environmental or wartime hazards, or preventive medicines or vaccines to which service members may have been exposed during service in the Southwest Asia theater of operations during the Persian Gulf War. Congress prescribed the inquiry it expected NAS to carry out in the event such an agreement was reached. Congress directed NAS to identify agents, hazards, medicines, and vaccines to which service members may have been exposed during the Persian Gulf War. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between exposure to the agent, hazard, medicine, or vaccine and the illness, taking into account the strength of the scientific evidence and the appropriateness of the scientific methodology used to detect the association; (2) the increased risk of illness among individuals exposed to the agent, hazard, medicine or vaccine; and (3) whether a plausible biological mechanism or other evidence of a causal relationship exists between exposure to the agent, hazard, medicine, or vaccine and the illness. Public Law 105-277, 112 Stat. 2681-747.

II. NAS Reports and VA Action

In 1998, NAS began a program to examine the scientific and medical literature on the potential health effects of specific agents and hazards to which Gulf War veterans might have been exposed during their deployment. Five reports have examined health outcomes related to: Depleted uranium, pyridostigmine bromide, sarin, and vaccines (Volume 1); insecticides and solvents (Volume 2); fuels, combustion products, and propellants (Volume 3); health effects of serving in the Gulf War irrespective of exposure information (Volume 4); and infectious diseases (Volume 5). Among the 700,000 U.S. military personnel deployed to the theater, many veterans have reported chronic symptoms and illnesses that

they have attributed to their service in the Gulf.

Upon receipt of each NAS report, VA must determine whether a presumption of service connection is warranted for any disease or illness discussed in the report. The statute provides that a presumption of service connection is warranted if VA determines that there is a positive association (*i.e.*, the credible evidence for an association is equal to or outweighs the credible evidence against an association) between exposure of humans or animals to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Southwest Asia theater of operations during the Persian Gulf War and the occurrence of a diagnosed or undiagnosed illness in humans or animals. 38 U.S.C. 1118(b). If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. 38 U.S.C. 1118(c)(3)(A).

III. NAS Report: "Gulf War and Health, Volume 6, Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress"

In "Gulf War & Health, Volume 6, Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress," available at http://www.nap.edu/catalog.php?record_id=11922 (accessed September 2, 2010), NAS evaluated the association between deployment-related stress and long-term adverse health effects for veterans deployed to the Persian Gulf and the Middle East to include not only veterans of the 1990-1991 Gulf War, but also veterans returning from Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF). This study was conducted at the request of VA to determine the possibility of an association between exposure to deployment-related stressors in the Gulf War and long-term adverse health effects.

The NAS committee reviewed published and peer-reviewed scientific and medical literature to characterize and weigh the strengths and limitations of the available evidence regarding the association between deployment to a war zone and specific adverse health effects. The committee considered studies of veterans of World War II, the Korean War, the Vietnam War, and the 1991 Gulf War.

The NAS committee's charge was to comprehensively review, evaluate, and summarize the peer-reviewed scientific and medical literature regarding the association between deployment-related stress and long-term adverse health effects in Gulf War veterans.

Specifically, the committee was to study the physiologic, psychological and psychosocial effects of stress, and VA requested that the study's findings not be limited to veterans of the Gulf War but be applicable to OEF and OIF.

The NAS committee considered all studies that identified health effects found in military personnel deployed to a war zone in order to evaluate the associations between deployment-related stress and adverse health effects. The potential health effects considered included not only physiologic effects and psychiatric effects, but also depression and posttraumatic stress disorder (PTSD), and psychosocial effects, such as marital conflict and incarceration. In addition, the NAS committee also considered studies of deployed veterans with combat-related PTSD and associated health effects, because PTSD can result only after exposure to a traumatic stressor and potentially traumatic events are common in a war zone. The NAS committee relied entirely on epidemiologic studies to draw its conclusion about the strength of the evidence for an association between deployment to a war zone (stressor) and health effects. The challenge of epidemiologic studies is to isolate the risk factors that contribute to health effects in populations that are inherently uncontrollable in the experimental sense; therefore, statistical techniques are used to take in to account factors such as bias and confounding.

Detailed information on the committee's findings may be found at: http://www.nap.edu/catalog.php?record_id=11922 (accessed September 2, 2010). The report findings are organized by category and can be found under Table of Contents.

In its report, NAS organized its conclusions into five categories, representing different degrees of association between illness and exposure to deployment-related stressors. The categories NAS used are "Sufficient Evidence of a Causal Relationship," "Sufficient Evidence of an Association," "Limited but Suggestive Evidence of an Association," "Inadequate/Insufficient Evidence to Determine Whether an Association Exists," and "Limited/Suggestive Evidence of No Association." These are the same categories of association that

have been used by previous NAS committees in their reports.

IV. VA's Determination

This notice conveys the Secretary's determination that a presumption of service connection is not warranted at the present time for any disease, illness, or health effect discussed in the NAS report, based on association with any substance known or suspected to be associated with service in the Gulf War.

The Secretary has determined that no new presumptions of service connection are warranted under 38 U.S.C. 1118 because the report does not demonstrate that the standard set forth in section 1118 for the creation of a presumption of service connection has been met. In particular, the report does not purport to link any health effects to exposure to "a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War." 38 U.S.C. 1118(a)(2)(A). As explained in more detail below, the report investigated the effects of stressors associated with deployment to any war zone, not just the Gulf War zone. Furthermore, the report does not identify health effects associated with a "biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine." *Id.* As discussed below, the statutory reference to agents, hazards, medicines, or vaccines is most reasonably construed to refer to exposure to specific substances capable of causing illness and not to the general effects of service in a war zone as an "exposure" in itself. *Id.*

Under 38 U.S.C. 501, the Secretary has discretion to issue any regulations necessary or appropriate to the administration of Veterans benefits. VA evaluated the findings in the NAS report to determine whether any presumptions or other regulatory changes are warranted under that discretionary authority. As explained below, VA has decided not to propose to issue any regulatory changes under that general authority based on the findings in the NAS report. This decision is based on one or more of the following with respect to the health effects evaluated in the report: (1) The report did not find an association between the health effects studied and service in a war zone, (2) the health effects studied were not a disease, injury, or illness for which service connection can be granted (e.g. suicide or marital conflict), or (3) existing VA regulations are sufficient to ensure that benefits will be

provided to veterans who incur the health effect as a result of service.

A. New Presumptions Under 38 U.S.C. 1118 Are Not Warranted

Public Law 105-277 requires the Secretary to determine whether a presumption of service connection is warranted by reason of a disease "having a positive association with exposure to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War." Public Law 105-277 § 1602 (codified in pertinent part at 38 U.S.C. 1118(a)(2)(A) and (b)(1)(B)). The statute does not explain the meaning of the phrase "known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War," and there is no legislative history explaining the meaning of that phrase.

Consistent with VA's past interpretation of section 1118, see 72 FR 48734, 48739-41 (Aug. 24, 2007), we conclude that the statutory phrase "associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War" is most reasonably construed to refer to a relationship between the substance or hazard and the specific circumstance of service in the Southwest Asia theater of operations during the Persian Gulf War, as distinguished from features of military or civilian life in general that are not unique to service in the Gulf War. The phrase "associated with" clearly connotes a direct relationship, and the requirement that the substance or hazard be associated with service at a particular time and place indicates an intent to distinguish between substances and hazards associated with general military or civilian life and those unique to service at the specified time and place. If military populations of all eras of wartime experience the same or similar deployment-related stressors related to deployment to a war zone, we believe it would be unreasonable to conclude that such stressors are "associated with" service in the Persian Gulf during the Gulf War. As the report explains, "The US military has participated in numerous wars on both US and foreign soil and, regardless of the conflict, many of the deployment-related stressors to which military personnel can be exposed are the same: possible death or injury to oneself, killing or injuring others, poor living conditions, and harsh physical environment." Similarly, the report

noted the universality of symptom-based illnesses among war zone veterans from essentially all eras: "Male and female veterans who have been deployed to a war zone, regardless of the war in which they served, report more symptoms and poorer health than do their nondeployed counterparts. Symptoms range from severe, such as chest pain and numbing in the extremities, to minor, such as loss of appetite." Gulf War and Health, Volume 6, Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress, at p. 31. The report specifically notes that this was not a unique issue for Gulf War veterans: "Some researchers have attempted to cluster the symptoms into new diseases but in general the symptoms are too broad and nonspecific to suggest the presence of a new illness specific to the Gulf War." We do not believe that Congress intended VA to establish presumptions for the known health effects of military deployments common to all military populations. Rather, the requirement that the agent, hazard, medicine, or vaccine be "associated with" Gulf War service makes clear that VA's task is to focus on the unique exposure environment in the Persian Gulf during the Persian Gulf War. *Id.* at 257

This reading of the statutory language comports with the clear purpose of both Public Law 105-277 and Public Law 105-368. *Id.* Both statutes reflect the Government's commitment to addressing the unique health issues presented by Gulf War veterans, by establishing a process for identifying diseases and illnesses that may be associated with Gulf War service. It is by now well known that many Gulf War veterans have reported a variety of similar symptoms that cannot presently be identified with a known diagnosis or cause and that were not considered "diseases" for the purposes of the statutes generally authorizing VA to pay compensation for service-connected disability or death due to disease or injury. Congress responded initially to that situation by authorizing VA to pay compensation for "undiagnosed illness" in such veterans. The process established by Public Law 105-277 and Public Law 105-368 reflects a further effort to bridge the existing gaps in medical and scientific knowledge and to ensure that Gulf War veterans may obtain compensation for diagnosed or undiagnosed illnesses that may have been caused by the unique exposures or hazards of service during the Gulf War. Establishing presumptions of service connection for illnesses associated with

exposures or hazards specifically related to Gulf War service obviously would further that objective. In contrast, establishing presumptions of service connection for the exclusive benefit of Gulf War veterans based solely on the well-known health effects of exposures shared in common with all veterans of other wartime deployments would not significantly further the purposes of those statutes. Moreover, establishing such presumptions would create significant inequities in the veterans' benefits system that Congress could not have intended.

Public Law 105-277 requires VA to establish presumptions of service connection, when the statutory requirements are met, exclusively for veterans who served in the Southwest Asia theater of operations during the Persian Gulf War. If the statute were construed to require presumptions based on exposure in the Persian Gulf War to stressors to which other veterans serving at other times and places are commonly exposed at similar levels, it would raise significant concerns of fairness and reasonableness. For example, veterans exposed or presumably exposed to stressors such as separation from family or fear of injury during the Gulf War might be entitled to presumptive service connection for certain psychiatric illnesses associated with such experiences, while veterans who served in other conflicts like Vietnam and had equal or greater exposure to deployment-related traumatic experiences would not be entitled to presumptive service connection. The fact that most service members deployed to a war zone incur some degree of exposure to the stressors NAS considered further underscores the arbitrariness that would attach to establishing presumptions for a limited class of veterans based on such common exposures. As discussed below in subsection B of this notice, current VA regulations and policies address the effects of such combat-related exposures and are not limited to veterans of Gulf War service. Providing by statute and regulation for the disparate treatment of similarly situated veterans would substantially undermine confidence in the objectivity and fairness of the veterans benefits system. Additionally, establishing different adjudicative rules for the claims of similarly situated veterans without any reasoned basis for the distinction would undoubtedly cause confusion to the VA personnel responsible for deciding claims, as well as to veterans and their representatives in presenting and supporting their claims.

We do not believe that Congress intended VA to establish presumptions unique to Gulf War veterans based on the well-known health effects of exposures common to deployments outside the Gulf War theater. As explained above, the language and purpose of Public Law 105-277 and Public Law 105-368 indicate that Congress did not intend such a result, and we believe it is reasonable to presume that Congress did not intend arbitrary or unfair distinctions. We note that statutes generally must be construed to avoid serious constitutional concerns. *See Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568, 575 (1988). We cannot say it is beyond Congress' power to establish presumptions exclusively for Gulf War veterans based on exposures not known to differ significantly from service outside the Gulf War. However, the apparent unfairness, in our view, of that result supports the conclusion that Congress did not intend such a result.

We recognize that some diseases and illnesses may be unique to the Gulf War theater. For example, nine diseases are currently entitled to a presumption of service connection based upon service in the Gulf War. 75 FR 59968 (September 29, 2010). As explained above, however, there is presently insufficient evidence to indicate that the stressors and health effects considered by NAS related to the Gulf War differed significantly from stressors present in other war zones and their attendant health effects.

Although the Secretary has determined that presumptions of service connection are not warranted for the health effects of deployment stressors as discussed in the NAS report, we want to make clear that this determination will not preclude the granting of service connection for those health effects that are diseases, injuries, or illnesses (as discussed in greater detail below, some of the health effects (*e.g.* suicide and marital conflict) are not themselves diseases, injuries, or illnesses and therefore VA has no authority to grant service connection on the basis of those health effects alone). The health effects that NAS found to be supported by limited/suggestive evidence are generally well-known health effects of exposure to war zone-related stressors. The established associations between war zone stressors and certain health effects like PTSD provide a sufficient basis for examining physicians and VA adjudicators to determine whether a veteran's disease is associated with exposure to stressors experienced in

service. We note further that our conclusion that the war zone-related stressors cannot be determined to be "associated with" Gulf War service is not intended to suggest that they are irrelevant to further investigations of Gulf War veterans' health.

Finally, establishment of any new presumptions based on the report is also unwarranted because the report does not identify health effects associated with a "biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine." Rather, the report examined health effects associated with deployment-related "stressors." The statutory reference to agents, hazards, medicines, or vaccines is most reasonably construed to refer to exposure to specific substances capable of causing illness and not to the general effects of service in a war zone as an "exposure" in itself. This interpretation is consistent with the list of agents, hazards, medicines, and vaccines Congress provided in § 1603(d) of Public Law 105-277.

B. New Presumptions Under the Secretary's General Rulemaking Authority (38 U.S.C. 501) Are Not Warranted

Under 38 U.S.C. 501, the Secretary has discretion to issue any regulations necessary or appropriate to the administration of Veterans benefits. VA evaluated the findings in the NAS report to determine whether any presumptions or other regulatory changes are warranted under that discretionary authority. As explained below, VA has decided not to propose to issue any regulatory changes under that general authority based on the findings in the NAS report. This decision is based on one or more of the following with respect to the health effects evaluated in the report: (1) The report did not find an association between the health effects studied and service in a war zone, (2) the health effects studied were not a disease, injury, or illness for which service connection can be granted (e.g. suicide or marital conflict), or (3) existing VA regulations are sufficient to ensure that benefits will be provided to veterans who incur the health effect as a result of service. The sections below explain in more detail the bases for this decision.

i. Inadequate/Insufficient Evidence to Determine Whether an Association Exists

For some health effects, the report found that evidence from available studies is of insufficient quantity, quality, or consistency to permit a

conclusion regarding the existence of an association between deployment to a war zone and a specific health effect in humans. Therefore, the evidence for these conditions does not provide sufficient evidence of association between the health effect and service to warrant any regulatory changes. The health effects under this category of association include:

- Cancer
- Diabetes mellitus
- Thyroid disease
- Neurocognitive and neurobehavioral effects
- Sleep disorders or objective measures of sleep disturbance
- Hypertension
- Coronary heart disease
- Chronic respiratory health effects
- Structural gastrointestinal diseases
- Reproductive effects
- Homelessness
- Adverse employment outcomes

ii. Sufficient Evidence of Association or Limited But Suggestive Evidence of an Association

For some health effects, the report found that evidence from available studies is sufficient to conclude that there is a positive association, i.e. a consistent positive association has been observed between deployment to a war zone and a specific health effect in human studies in which chance and bias, including confounding, could be ruled out with reasonable confidence. The health effects under this category of association include:

- Psychiatric disorders, including PTSD, other anxiety disorders, and depressive disorders
- Alcohol abuse
- Accidental death in the early years after deployment
- Suicide in the early years after deployment
- Marital and family conflict

For some health effects, the report found that evidence from available studies is suggestive of an association between deployment to a war zone, but the body of evidence is limited by inability to rule out chance of bias, including confounding, with confidence. The health effects under this category of association include:

- Drug abuse
- Chronic fatigue syndrome
- Gastrointestinal symptoms consistent with functional gastrointestinal disorders, such as irritable bowel syndrome or functional dyspepsia
- Skin disorders
- Fibromyalgia and chronic widespread pain
- Increased symptom reporting, unexplained illness, and chronic pain
- Incarceration

VA has decided not to propose new presumptions of service connection for any of these health effects for the

reasons discussed in the sections that follow.

iii. Health Effects that Are Not Injuries, Diseases, or Illnesses

Some health effects evaluated by the report are not injuries, diseases, or illnesses and therefore cannot form the basis of a grant of service connection. See 38 CFR 3.1(m); 38 U.S.C. 105. Unless these phenomena, such as accidental death, can be linked to a disease or injury incurred or aggravated in service, VA would have no authority to compensate veterans or their survivors, through new presumptions or otherwise, absent new legislative authority. These health effects include: Accidental death in the early years after deployment
Marital and family conflict
Incarceration
Suicide in the early years after deployment

With respect to suicide, although suicide itself is not a disease or injury for which service connection can be granted, VA regulations at 38 CFR 3.302 provide that, if a veteran had a service connected disability involving mental unsoundness, VA will presume that the suicide resulted from that condition. Accordingly, no change in the current regulation is needed with respect to suicide for this reason as well.

iv. Health Effects Statutorily Barred From Service Connection

Alcohol abuse and drug abuse are health effects evaluated by the report which are statutorily barred from service connection under 38 U.S.C. 1110. See also 38 CFR 3.301(d). A veteran may only establish service connection for alcohol abuse or drug abuse on a secondary basis if the alcohol abuse or drug abuse is proximately due to another service-connected condition. See *Allen v. Principi*, 237 F.3d 1368 (Fed. Cir. 2001); 38 CFR 3.310(a). Therefore, establishment of a presumption of service connection for alcohol abuse or drug abuse is prohibited.

v. Psychiatric Disorders

The report evaluated a number of psychological health effects from the deployment-related stressors. A presumption of service connection is not warranted for any of these psychiatric health effects, which include the following:

- PTSD
- Anxiety
- Depression

The NAS report notes that these psychiatric conditions may be triggered by the experience of wartime

deployment. However, it is also well established that these conditions, particularly anxiety and depression, are widespread and may be triggered by multiple life events, including those occurring before and after service. When a veteran seeks service-connected benefits for a psychiatric disease, VA routinely provides a psychiatric examination to assist in establishing that the condition is related to the veteran's service. This process works efficiently to ensure that veterans are properly compensated for psychiatric disabilities that are associated with service. Accordingly, VA has determined that a broad presumption of service connection for such psychiatric conditions is not needed.

With respect to PTSD, we also believe that existing VA regulations provide an effective means of ensuring that service-connected benefits are properly provided for PTSD related to deployment to a combat zone and that a presumption of service connection is thus unnecessary. The diagnosis of PTSD and a determination that PTSD is related to service both require the identification of a specific stressor sufficient to cause PTSD. Because the identification of a stressor is essential to a proper diagnosis of PTSD, a presumption of service connection for a veteran's diagnosed PTSD would not eliminate that requirement. Further, existing VA regulations provide liberal evidentiary standards for establishing the existence of stressors associated with combat or deployment to a combat zone. Under 38 CFR 3.304(f)(2), if a veteran engaged in combat with the enemy, the veteran's lay statements regarding the occurrence of an in-service stressor are sufficient to establish that fact, absent clear and convincing evidence to the contrary and provided the veteran's statements are consistent with the circumstances, conditions, or hardships of the veteran's service.

Further, recent amendments to 38 CFR 3.304(f) have liberalized the evidentiary standard for establishing the required in-service stressor in certain circumstances. 75 FR 39843 (July 13, 2010). This amendment eliminates the requirement for corroborating that the claimed in-service stressor occurred if a stressor claimed by a veteran is related

to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a diagnosis of PTSD and that the veteran's symptoms are related to the claimed stressor, provided that the claimed stressor is consistent with the places, types, and circumstances of the veteran's service. This rule provides a low evidentiary standard for establishing the existence of stressors associated with certain aspects of deployment to a combat zone such as fear of hostile military or terrorist activity related to such deployments.

vi. Skin Disorders

With respect to skin disorders, as mentioned above the report placed skin disorders under the association category Limited but Suggestive Evidence of an Association. This association category indicates that the report found that evidence from available studies is suggestive of an association between deployment to a war zone and skin disorders, but the body of evidence is limited by inability to rule out chance of bias, including confounding, with confidence. Specifically, the report found a number of studies showing increased prevalence of skin disorders in deployed veterans, but that the studies varied widely as to which specific types of skin disorders were more prevalent, and NAS noted that some of the observed increases could be attributable to chance or to undetermined environmental exposures, while others may be secondary to PTSD or other stress disorders. In view of the varied nature of the findings, the evidence does not indicate a basis for presuming specific skin diagnoses to be associated with Gulf War service or other wartime deployments. To the extent the evidence shows increased reporting of signs or symptoms relating to the skin, 38 U.S.C. 1117 and 38 CFR 3.317 already provide for presumptive service connection of undiagnosed or unexplained illnesses involving such signs or symptoms.

vii. Health Effects Already Covered by Existing Regulatory or Statutory Presumptions

The remainder of the health effects evaluated by the report are already considered in the presumptions of service connection for undiagnosed illnesses and medically unexplained chronic multisymptom illnesses under 38 U.S.C. 1117 and 38 CFR 3.317. Chronic fatigue syndrome and fibromyalgia are presumptively service-connected as medically unexplained chronic multisymptom illnesses. 38 CFR 3.317(a)(2)(B). VA has also recently proposed to clarify that functional gastrointestinal disorders are medically unexplained chronic multisymptom illnesses. 75 FR 70162 (November 17, 2010). Additionally, chronic pain and increased symptom reporting can be considered as signs and symptoms that may be manifestations of undiagnosed illness or medically unexplained chronic multisymptom illness under § 3.317(a)(2)(i). Therefore, establishment of a presumption for these health effects is not necessary.

V. Conclusion

For the reasons stated above, the Secretary has determined that a presumption of service connection is not warranted at this time for any of the diseases, illnesses, or health effects discussed in the NAS report issued on November 15, 2007, titled, "Gulf War and Health, Volume 6: Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress."

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on January 6, 2011, for publication.

Dated: January 7, 2011.

Robert C. McFetridge,

Director, Regulations Policy and Management, Department of Veterans Affairs.

[FR Doc. 2011-552 Filed 1-12-11; 8:45 am]

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