

May 1996

# VETERANS' COMPENSATION

## Evidence Considered in Persian Gulf War Undiagnosed Illness Claims







United States  
General Accounting Office  
Washington, D.C. 20548

Health, Education, and  
Human Services Division

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The Honorable John D. Rockefeller IV  
Ranking Minority Member  
Committee on Veterans' Affairs  
United States Senate

Dear Senator Rockefeller:

Over 700,000 men and women served in Southwest Asia during the Persian Gulf War. Some of these veterans began experiencing symptoms—such as fatigue, weight loss, and skin conditions—that could not be diagnosed or associated with a specific illness or disease. In 1994, the Congress enacted legislation allowing the Department of Veterans Affairs (VA) to pay compensation benefits to veterans for Persian Gulf related disabilities caused by undiagnosed illnesses. As of July 1995, VA had denied almost 95 percent of the 4,144 claims it had processed for Persian Gulf veterans claiming such disabilities.

Concerned about the high denial rate, you asked us to identify the procedures that VA used to process Persian Gulf War undiagnosed illness claims. In this report, we identify (1) the evidence standards that VA has established to process Persian Gulf claims, (2) the evidence in the claim files that VA considered in reaching its decisions, and (3) VA's reporting of the reasons for denial.

To accomplish our objectives we conducted discussions with officials of VA's central office and its four area processing offices that process Persian Gulf claims and we obtained and analyzed pertinent documents and records, such as VA's regulation and procedures for processing Persian Gulf claims. We also analyzed a nationally representative sample of the undiagnosed illness claims that VA had denied as of September 1995 and for purposes of comparison, we reviewed a random, nonstatistical sample of granted claims. Further details of our scope and methodology are in appendix I.

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## Results in Brief

Before compensation can be paid for an undiagnosed illness, VA requires evidence that a chronic disability developed within 2 years of a veteran's service in the Persian Gulf War. Such evidence could include support from an examining physician and nonmedical evidence that can be

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independently verified, such as lost time at work or statements from individuals familiar with the veteran's condition.

For the denied undiagnosed illness claims that we reviewed, the evidence included mainly service medical records and VA medical exams. Few of the files contained nonmedical evidence. For the granted claims, the evidence was similar but, in general, showed a history of treatment for the claimed condition. For the most part, VA denied the claims for a lack of evidence. Both VA and the veterans may have contributed to this lack of evidence. In some instances, VA did not provide required assistance or clear and useful information to veterans regarding the type of evidence needed to support undiagnosed illness claims. On the other hand, even when VA followed appropriate procedures to develop the claims, veterans did not always provide the evidence needed to support their claims. Although VA has rarely granted compensation for undiagnosed illnesses, many Gulf War veterans have received VA benefits for diagnosable service-connected conditions that accompanied their undiagnosed illness claims. Of the denied claims that we reviewed, 60 percent of the veterans had been granted compensation for diagnosable illnesses.

VA's reports to the Congress regarding undiagnosed illness claims have not always accurately described the reasons that claims were denied. In most of the denied cases that we reviewed, VA found insufficient evidence to support the claimed disability but reported that the claims were denied because the disability did not arise during the 2-year presumptive period. These VA reports suggest that veterans had well-documented disabling conditions but would receive no compensation simply because their disability arose at some time outside of the presumptive period. Our work suggests that in most cases, even with an extended presumptive period, more evidence would have been needed before VA could grant compensation. VA plans to assess the extent of the problem and take the necessary corrective action.

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## Background

As has been reported by many researchers, some Gulf War veterans developed illnesses that could not be diagnosed or defined and for which other causes could not be specifically identified. These illnesses have been attributed to many sources, including a large number of unusual environmental hazards found in the Gulf. The Congress enacted the Persian Gulf War Veterans' Benefits Act<sup>1</sup> (P.L. 103-446, Nov. 2, 1994) which, among other things, allowed VA to pay disability

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<sup>1</sup>Title I of the Veterans' Benefits Improvements Act of 1994.

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compensation to veterans suffering from undiagnosed illnesses attributed to their service in the Persian Gulf. Compensable conditions include but are not limited to abnormal weight loss, cardiovascular symptoms, fatigue, gastrointestinal symptoms, headaches, joint and muscle pains, menstrual disorders, neurologic symptoms, neuropsychological symptoms, skin disorders, respiratory disorders, and sleep disturbances.

Under the procedures that VA established to process undiagnosed illness claims, veterans submit completed claim forms to a VA regional office (VARO). Each VARO is responsible for fully developing the claims. VAROs obtain medical records from the military services; arrange for a VA medical examination; and obtain evidence from other sources, such as private health care providers or knowledgeable lay persons, if the veteran identifies such sources. Once the claim is developed, the claims file is transferred to one of the four area processing offices that VA has designated for processing undiagnosed illness claims.

As mentioned earlier, over 700,000 men and women served in the Persian Gulf War. VA reported that as of February 1996, it has processed 7,845 undiagnosed illness claims and has identified an additional 6,655 claims that are being evaluated for undiagnosed illnesses.<sup>2</sup> Of the processed claims, VA had denied compensation for undiagnosed illness to 7,424 veterans—a denial rate of 95 percent.

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## VA Procedures Require Veterans to Provide Evidence Proving Their Claims

In February 1995, VA issued a regulation (38 C.F.R. 3.317) that specifies the evidence required before compensation can be paid for an undiagnosed illness claim. Under the regulation, veterans must provide objective indications of a chronic disability. Objective indications include both signs—evidence perceptible to the examining physician—and other nonmedical indications that are capable of independent verification. In the final rule, VA explained that nonmedical indicators of a disabling illness include but are not limited to such circumstances or events as (1) time lost from work; (2) evidence that a veteran has sought medical treatment for his or her symptoms; and (3) evidence affirming changes in the veteran's appearance, physical abilities, or mental or emotional attitude. The evidence requirements contained in the regulation are consistent with the Joint Explanatory Statement that accompanied the Veterans' Benefits Improvements Act of 1994.

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<sup>2</sup>VA reviews all Persian Gulf compensation claims that are based on exposure to environmental hazards to determine if benefits could be granted for undiagnosed illness whether or not the veteran claims such an illness.

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According to the VA regulation, a veteran can only be compensated for disabilities caused by undiagnosed illnesses that (1) manifest themselves during service in the Gulf War or (2) arise within 2 years of a veteran's departure from the Persian Gulf. If the illness arose after the veteran left the Gulf, the veteran must be at least 10-percent disabled to be compensated. In addition, the veteran must demonstrate that the disabling condition is chronic—present for 6 months or longer.

In some cases, lay statements can provide critical support for a veteran's undiagnosed illness claim. As stated in the VA claims processing manual, lay statements may be especially important in cases where an undiagnosed illness is manifest solely by symptoms that the veteran reports and that would, therefore, not be subject to verification through medical examination. Examples of such symptoms include headaches and fatigue. According to VA, lay statements from individuals who establish that they are able from personal experience to make their observations or statements will be considered as evidence if they support the conclusion that a disability exists.

While veterans are ultimately responsible for proving their claims, VA is required by statute to assist the veteran in developing facts to prove the claim. The U.S. Court of Veterans' Appeals has also held in its decisions that VA has a duty to assist veterans with proving their claims and is required to obtain relevant facts from sources identified by claimants. A VA letter dated February 15, 1995, instructed all VA regional offices that "if a veteran alleges that a disability began after military service, request objective evidence (lay or medical) to establish that fact."

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## Experience in Reviewing Claims Evidence

Many types of evidence can be used to support undiagnosed illness claims. The denied claims that we reviewed contained primarily service medical records and VA medical examinations. About 15 percent of the claims included medical records from private physicians seen by the veterans after leaving military service and less than 3 percent contained nonmedical evidence related to an undiagnosed illness, such as lay statements and records showing lost time from work.

The granted claims that we reviewed also contained primarily service medical records and VA examinations. In these cases, however, veterans were usually able to provide VA with a history, after leaving the Persian Gulf, of treatment for the granted undiagnosed condition. Some granted

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claims were supported with nonmedical evidence, such as a sworn statement from an individual with knowledge of the veteran's disability.<sup>3</sup>

Many of the veterans evaluated for undiagnosed illnesses are also examined for other diagnosable service-connected illnesses and injuries. While VA does not often grant compensation for undiagnosed conditions, these veterans often receive compensation for diagnosable injuries or illnesses. Of the cases that we reviewed where the claimed undiagnosed illness(es) had been denied, about 60 percent of the veterans had been granted compensation for at least one service-connected diagnosable condition, such as hypertension, hearing loss, or knee disorders. About one-half of these veterans were granted a disability payment; the remainder, with minor impairments, are eligible for free care for their conditions through the VA medical system.

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**VA Did Not Always Provide Required Assistance or Clear and Useful Information**

The lack of evidence to support undiagnosed illness claims may in part be the result of poor VA procedures to elicit such information, as the following examples indicate.

- In late 1995, VA's central office conducted a review of 203 completed undiagnosed illness claims. VA found that additional specialty examinations should have been ordered in 23 cases (about 11 percent). At the time of our work, VA stated that the required examinations would be scheduled and the veterans' cases would be reconsidered based on the additional evidence.
- In 5 of the 79 denied cases that we reviewed, VA had not requested records from physicians who had treated the veteran since leaving military service. For one case, VA officials stated that an attempt was made to obtain the evidence but the doctor failed to respond. In three cases officials stated that the medical records were not obtained due to error. According to area processing office officials, private medical records were not obtained in the other case because the veteran visited the doctor after the presumptive period.
- Although VA recognizes the importance of nonmedical objective evidence—for example, work records and lay statements from knowledgeable individuals—in supporting some undiagnosed illness claims, VA's standard compensation claim form does not request such evidence. The form does ask veterans to identify individuals who know about the veteran's medical treatment while in the service; in many cases,

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<sup>3</sup>About one-half of the undiagnosed conditions that VA granted were found to be 10-percent disabling, with the highest disability rating being 40 percent.

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however, the claimed undiagnosed illness was not treated in the service. According to VA officials, the form was designed to obtain evidence about typical illnesses and injuries that usually occur while veterans are in the service as opposed to Persian Gulf illnesses that can become manifest after veterans leave military service.

- While the VA form does not specifically request nonmedical information, about 15 percent of the veterans did provide VA with the names of individuals who were knowledgeable about their claimed illness. However, VA did not obtain statements from these individuals.

Officials at the area processing offices cited several reasons why lay statements were not obtained or used. These reasons include the veteran's failure to provide a complete address for the knowledgeable individual and that the evidence fell outside the presumptive period. In one case, an area processing office official stated that VA should have obtained the statements. While the head of the claims processing unit at one area processing office questioned the value of lay statements and whether VA was responsible for obtaining them, VA central office officials acknowledged that VA was responsible for obtaining lay statements and a central office official told us that statements would be obtained for the cases that we identified and that the claims would be reconsidered after the statements were obtained.

- After the Congress passed legislation allowing compensation for undiagnosed illnesses, VA reexamined all completed Gulf War claim files to determine if compensation was warranted. In some of these cases that we reviewed, there was no indication that VA had informed the veteran after the legislation about the specific types of medical and nonmedical evidence that could be submitted to support the claim. According to VA officials, VA had decided to provide this information to the veterans on a case-by-case basis.

VA's central office acknowledged that the existing procedures to develop undiagnosed illness claims are not adequate and that area processing offices could do a better job of requesting both medical and nonmedical evidence from veterans in support of undiagnosed illness claims. VA has taken a step to provide better information to veterans regarding evidence to support undiagnosed illness claims. VA has developed a letter that clearly states the types of medical and nonmedical evidence that can be used to support these claims. VA is now sending this letter to all veterans who file undiagnosed illness claims.



## Veterans Did Not Always Provide Needed Support for Claims

In the denied cases that we reviewed, even when VA followed all appropriate procedures to develop claims, the veterans did not always provide the necessary evidence that would allow their claims to be granted.

- Only 30 percent of the veterans in the denied cases that we reviewed provided evidence that they had sought medical treatment for the claimed undiagnosed condition after leaving the service—some veterans said that they could not afford medical treatment from private providers while others indicated that they were too busy to see a physician.
- About 40 percent of the veterans in the denied cases that we reviewed were informed that their denied undiagnosed illness claims would be reconsidered if additional evidence was submitted; and VA thoroughly described the evidence that would be acceptable. However, only 4 percent of these cases included any additional information from the veteran.
- Twenty-three percent of the veterans in the denied cases that we reviewed did not show up for all the scheduled examinations. As a result, VA was unable to identify and thoroughly evaluate the claimed disabling conditions.

## VA Reports Overstate Presumptive Period as Reason for Denial

VA does not always correctly categorize the reason undiagnosed illness claims were denied. VA requires each of its area processing offices to record the reason that undiagnosed illness claims were denied. Reported results are compiled and presented periodically to the Congress. According to VA, most claims are denied because the claimed disability did not become manifest on active duty in the Persian Gulf or during the 2-year presumptive period. Table 1 shows the latest data submitted by VA.

**Table 1: Reasons VA Denied 7,424 Persian Gulf Undiagnosed Illness Claims as of February 1996**

Reason for denial	Number	Percent
Illness diagnosed	685	9.23
Illness not chronic	177	2.38
Due to other cause	29	0.39
Not manifest during service in the Gulf or during the 2-year presumptive period	4,640	62.50
Not shown by evidence	1,776	23.92
Less than 10-percent disabling	117	1.58

Of the denied claims that we reviewed, most—68 percent—had been categorized by VA as being denied because the claimed illness did not become manifest on active duty or during the presumptive period.

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However, in most of these cases, VA had explained in its decision letter to the veteran that insufficient evidence was presented to demonstrate that the claimed conditions existed, was chronic, or was disabling to a compensable degree of 10 percent or more.

By failing to appropriately categorize denied claims, VA may be creating the impression that many veterans with otherwise compensable disabilities do not receive benefits solely as a result of the presumptive period. Our review suggests that if the presumptive period was extended, VA would still be required to deny the claims unless the veteran provided additional evidence regarding the chronic nature or disabling impact of the illness. VA officials acknowledged that their current reports could be misinterpreted. They told us that VA will assess the extent of the problem and take the necessary corrective action.

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## Agency Comments and Our Evaluation

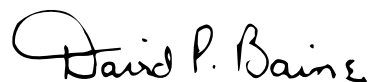
We obtained comments on a draft of this report from VA officials, including the Deputy Under Secretary for Benefits. The officials generally agreed with our findings and noted that the agency is taking additional steps to address the concerns that we raised. Specifically, VA officials reiterated their commitment to providing veterans with better information regarding acceptable evidence to support undiagnosed illness claims and to more accurately categorize the reasons that claims are denied. The officials told us that VA's central office will also undertake additional claims reviews to ensure that field offices are following all appropriate procedures. VA's comments included some technical changes, primarily for clarification, which we incorporated in this report as appropriate.

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As arranged with your office, unless you announce its contents earlier, we plan no further distribution of this report until 7 days after the date of this letter. At that time, we will send copies to the Chairman, Senate Committee on Veterans' Affairs; the Secretary of Veterans Affairs; and other interested parties.

This work was performed under the direction of Irene Chu, Assistant Director, Health Care Delivery and Quality Issues. If you or your staff have any questions, please contact Ms. Chu or me on (202) 512-7101. Other major contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink that reads "David P. Baine". The signature is written in a cursive style with a large initial "D".

David P. Baine  
Director, Health Care Delivery  
and Quality Issues

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## Abbreviations

VA	Department of Veterans Affairs
VARO	Department of Veterans Affairs Regional Office

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# Scope and Methodology

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To identify the evidence standards that VA established to process Persian Gulf War claims, we visited the VA central office in Washington, D.C., and two of the four area processing offices that VA designated as responsible for processing undiagnosed illness claims—Louisville, Kentucky, and Nashville, Tennessee (which together processed 72 percent of undiagnosed illness claims). We also conducted telephone discussions with officials at the other two area processing offices—Phoenix, Arizona, and Philadelphia, Pennsylvania. We also obtained pertinent documents and records from these offices.

To obtain information about the undiagnosed illness disability compensation claims, we statistically sampled 79 of the 4,990 claims that VA had denied as of September 21, 1995. We randomly selected the claims from VA's database of completed Persian Gulf War claims. Our sample size provides a 90-percent confidence level that the characteristics of our sample match the total population of denied claims within a specified error rate. The error rate was no greater than 11 percent.

We also reviewed the claims files of 26 randomly selected veterans from the 273 whose claims for undiagnosed illnesses had been granted as of September 21, 1995. We selected four granted claims each from the Nashville, Louisville, and Philadelphia offices and 14 from the Phoenix office. We selected additional claims from the Phoenix office because it had processed 32 percent of all granted claims although it only processed 11 percent of all Persian Gulf claims. This was not a statistical sample; therefore, the results cannot be projected to the universe of granted claims. Instead, we reviewed these claims to allow a comparison with the denied claims.

In conducting our samples we reviewed documents pertinent to our work, including the veterans' application forms; letters from VA to the veterans about additional evidence; medical examinations; and rating statements with the letters containing VA's decisions. Data about all Persian Gulf War illnesses and other information were abstracted from those documents and entered into a database for analysis.

The purpose of our review of the denied and granted claim files was to identify the evidence contained therein and gain additional information on VA's reasons and bases for denying or granting the claims. We made no effort to assess the appropriateness of VA's decisions. We performed our review between August 1995 and March 1996 in accordance with generally accepted government auditing standards.

# Major Contributors to This Report

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