



US DEPARTMENT OF VETERANS AFFAIRS OFFICE OF INSPECTOR GENERAL

Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

Nonadherence to Requirements for Processing Gulf War Illness Claims Led to Premature Decisions

Review

22-02194-152

September 7, 2023

BE A
VOICE FOR
VETERANS

REPORT WRONGDOING
va.gov/oig/hotline | 800.488.8244

OUR MISSION

To serve veterans and the public by conducting meaningful independent oversight of the Department of Veterans Affairs.

CONNECT WITH US



Subscribe to receive updates on reports, press releases, congressional testimony, and more. Follow us at [@VetAffairsOIG](https://twitter.com/VetAffairsOIG).

PRIVACY NOTICE

In addition to general privacy laws that govern release of medical information, disclosure of certain veteran health or other private information may be prohibited by various federal statutes including, but not limited to, 38 U.S.C. §§ 5701, 5705, and 7332, absent an exemption or other specified circumstances. As mandated by law, the OIG adheres to privacy and confidentiality laws and regulations protecting veteran health or other private information in this report.



Executive Summary

Gulf War illness is a term that refers to a group of unexplained or ill-defined chronic symptoms found in veterans deployed to the Persian Gulf during Operations Desert Storm and Desert Shield.¹ VA will pay compensation to veterans who may be suffering from a Gulf War illness if they exhibit objective indications of a qualifying chronic disability. A qualifying chronic disability may be either (1) an “undiagnosed illness” or (2) a “medically unexplained chronic multisymptom illness” (hereafter referred to as medically unexplained illness), both described in table 1.²

Summary Table 1. Two Types of Qualifying Chronic Disabilities

| Illness | Definition |
|-------------------------------|---|
| Undiagnosed illness* | A disability that cannot be attributed to any known clinical diagnosis by <ul style="list-style-type: none">• history,• physical examination, and• laboratory tests |
| Medically unexplained illness | Diagnosed illness <ul style="list-style-type: none">• without conclusive pathophysiology or etiology;**• characterized by overlapping symptoms and signs; and• [exhibiting] features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities |

Source: 38 C.F.R. § 3.317.

* An undiagnosed illness is a condition that does not follow a particular clinical course that can be generally predicted. An undiagnosed illness can be said to exist if the physician is unable to attribute a disability to such a known clinical diagnosis. 60 Fed. Reg. 6,662 (Feb. 3, 1995).

** Pathophysiology refers to functional changes typically accompanying an illness; etiology refers to its cause.

Due to the large population of veterans who could be eligible for compensation for Gulf War illness, the VA Office of Inspector General (OIG) conducted this review to determine whether the Veterans Benefits Administration (VBA) processes disability claims related to Gulf War illness in accordance with applicable requirements. Adherence to requirements will help VBA

¹ VA War Related Illness and Injury Study Center, “Gulf War Illness: Information for Veterans,” accessed April 22, 2021, <https://www.warrelatedillness.va.gov/education/factsheets/gulf-war-illness-for-veterans.pdf>.

² 38 C.F.R. § 3.317 (2023).

ensure that the large population of potentially eligible veterans receive the benefits to which they are entitled.

VBA staff generally process veterans' claims for Gulf War illness as they do other disability benefits claims. Claims processors must review each claim and assist the veteran in gathering evidence needed to evaluate it.³ Gathering evidence includes ordering medical examinations and requesting medical opinions when necessary. Medical examiners complete the examinations using forms known as disability benefits questionnaires, which must be used for VA examinations. When specifically requested, examiners also will provide medical opinions based on the information provided to them.⁴ Claims processors later analyze the evidence and make decisions on the claim.

Federal regulation sets out requirements for granting benefits for Gulf War illness. These include the veteran's military service in certain areas and having symptoms that either became manifest during military service or to a degree of 10 percent or higher before December 31, 2026.⁵ In 2001, the VA added medically unexplained illnesses as a separate qualifying chronic disability to the regulation.⁶ VA clarified in an October 2010 update,

The regulation sets forth clear and detailed standards to guide the determination as to what constitutes a medically unexplained chronic multisymptom illness. We believe the regulatory language provides sufficient guidance to enable medical professionals to render medical opinions on this issue and to enable VA adjudicators to decide this issue when it arises in individual cases.⁷

In addition to the general requirements that must be met for benefits for a medically unexplained illness, such as chronic fatigue syndrome or fibromyalgia, the regulation provides a specific definition for functional gastrointestinal disorders (another example of a medically unexplained illness outlined by the regulation).⁸ It defines functional gastrointestinal disorders as "a group of conditions characterized by chronic or recurrent symptoms that are unexplained by any structural, endoscopic, laboratory, or other objective signs of injury or disease and may be related to any part of the gastrointestinal tract." The regulation goes on to explain that "the

³ VA Manual 21-1, "Duty to Assist with Providing a Medical Examination or Opinion," updated September 15, 2021, sec. IV.i.1.A in *Adjudication Procedures Manual*.

⁴ Opinions are medical assessments on questions such as etiology or onset.

⁵ 38 C.F.R. § 3.317. VA makes a determination about the severity of the disability based on the evidence submitted or obtained as part of the claim and rates the disability from 0 percent to 100 percent in 10 percent increments.

⁶ Compensation and Pension Provisions of the Veterans Education and Benefits Expansion Act of 2001, 68 Fed. Reg. 34539, 34540 (June 10, 2003) (to amend 38 C.F.R. § 3.317).

⁷ Compensation for Certain Disabilities Due to Undiagnosed Illnesses, 75 Fed. Reg. 61,995, 61,996 (Oct. 7, 2010) (to amend 38 C.F.R. § 3.317). The update also delegated to VA claims processors the authority to determine, on a case-by-case basis, whether a disease meets the criteria found in the regulation. The intent was for claims processors to determine this in the same manner as they do other types of claims.

⁸ 38 C.F.R. § 3.317.

diagnosis of specific functional gastrointestinal disorders is to be made in accordance with established medical principles.”⁹ These generally require symptom onset of at least six months before diagnosis and the presence of symptoms sufficient to diagnose the specific disorder at least three months before diagnosis.¹⁰ Structural gastrointestinal disorders, however, are specifically excluded from consideration to entitlement for benefits under the regulation.¹¹

What the Review Found

The OIG found that VBA’s Gulf War illness claims process did not ensure that all requirements specified in VA regulations were met prior to deciding disability compensation claims. This resulted in errors identified by the OIG team and acknowledged by VBA, as well as an ongoing risk that VBA will continue to decide claims prematurely.

The OIG team considered a decision to be in error when the evidence was not sufficient to decide the claim in accordance with regulatory requirements.¹² Based on a statistical sample of 65 claims, the OIG team determined that VBA prematurely decided an estimated 3,200 of the 13,800 Gulf War illness claims (23 percent) completed from October 1, 2021, through March 31, 2022.¹³ An estimated 1,900 of these decisions immediately affected veterans’ benefits, with premature payments resulting in at least \$5.1 million in improper overpayments for those six months.¹⁴ Errors involved instances when the veteran did not meet the military service requirement, examiners improperly identified clinically diagnosed conditions as undiagnosed illnesses, or conflicting medical evidence of record was not considered. These types of errors

⁹ 38 C.F.R. § 3.317.

¹⁰ 38 C.F.R. § 3.317. The OIG team found many cases in which examiners diagnosed functional gastrointestinal disorders despite the evidence of record (including any treatment or personnel record) showing that the veteran suffered from structural gastrointestinal disorders excluded from eligibility for benefits under the regulation.

¹¹ 38 C.F.R. § 3.317.

¹² For decisions the OIG review team found were prematurely decided without sufficient evidence, a synopsis of the claims was provided to VBA’s quality assurance staff for an opportunity to review and provide comments. In cases for which the VA examinations did not contain the information needed to determine entitlement under the regulation, VBA agreed the decisions were in error. More information on the review scope and methodology appears in appendix A.

¹³ The sample size (65 claims) was selected to result in a margin of error of 10 percent or less for the overall error rate projection. If the OIG repeated this audit with multiple sets of samples, the confidence intervals would differ for each sample but would include the true population value 90 percent of the time. See appendix B for more information on the sampling methodology.

¹⁴ The Office of Management and Budget (OMB) defines federal payments as improper when they are for an incorrect amount, paid to an ineligible recipient, or issued without adequate supporting documentation. An overpayment, according to OMB, is a form of improper payment that “jeopardize[s] agency missions by diverting resources from their intended purpose.” OMB, “Requirements for Payment Integrity Improvement,” app. C in OMB Circular A-123, *Management’s Responsibility for Enterprise Risk Management and Internal Control*, March 5, 2021.

could result in an estimated \$25.6 million in improper payments from fiscal year 2022 through one year following the publication of the related recommendations in this report.¹⁵

The processes the OIG reviewed for requesting and documenting Gulf War medical examinations increased risks of errors because they did not produce all the evidence needed to determine whether the regulatory requirements were met. The OIG team found the following shortcomings with examinations:

- Medically unexplained illnesses are being identified without findings that show they meet the specific diagnostic criteria of the regulation.
- Gastrointestinal conditions are being identified as medically unexplained illnesses without a determination as to whether they are functional or structural.
- Examination findings do not support that the diagnoses of specific functional gastrointestinal disorders, such as irritable bowel syndrome, are made according to established medical principles.
- Determinations of whether the veteran has a qualifying chronic disability are made without the required explanation or medical opinion.

Relying on these examinations increases the risk of premature entitlement decisions. The OIG team estimated a total of 5,500 of the 13,800 claims (40 percent) reviewed had medical examinations that did not contain the necessary information or related documentation.

VBA's Gulf War Claims Process Did Not Ensure All Evidence Was Gathered to Meet Regulatory Requirements, Leading to Premature Decisions

VBA lacked evidence needed to decide the claims because its examination requests and disability benefits questionnaires do not elicit the information needed by claims processors to determine whether a veteran is eligible for benefits under the regulation.¹⁶ This information includes medically unexplained illnesses being identified without findings that show they meet the specific diagnostic criteria of the regulation, or qualifying chronic disabilities are identified

¹⁵ The projection is an extrapolation of the six-month estimate of at least \$5.1 million in improper payments as noted in appendix B, table B.3, and appendix C. The OIG team's estimate of \$25.6 million in improper payments was based only on those sampled claims that VBA agreed were processed incorrectly. This estimate is for the review period of October 2021 through one year after the publication of this report. Because the OIG typically expects all recommendations to be fully implemented within one year following publication, the estimate for monetary impact is 2.5 years and highlights the significant impact if the recommendations are not fully implemented. See appendix C for more information regarding monetary benefits in accordance with section 405 of the Inspector General Act.

¹⁶ Disability benefits questionnaires are a disease- and condition-specific documentation tool to provide the precise medical evidence needed to make decisions on claims. VA Manual 21-1, "Examination Requests Overview," updated March 1, 2021, sec. IV.i.2.A.

without the required explanation or medical opinion. Additionally, some VBA manual provisions provided confusing information that caused claims processors to make decisions unsubstantiated by the overall evidence of record and to not require supporting medical opinions.

Examination Requests and Disability Benefits Questionnaires Do Not Gather All Needed Information Needed to Make Processing Compliant with Requirements

Set instructions that must be added to examination requests do not provide a full definition of some key terms. For example, while undiagnosed illnesses are defined, the instructions do not indicate what is needed to determine whether a veteran has a medically unexplained illness.

Disability benefits questionnaires used for evaluating claims for Gulf War illnesses also do not ask specific questions that would show how a condition meets requirements to be an undiagnosed illness. There are no questions about laboratory testing or other potential diagnoses, or any requirement for the examiner to explain why the veteran’s symptoms could not be attributed to a known clinical diagnosis. The questionnaire also does not include the information necessary for claims processors to determine whether a medically unexplained illness meets the regulation’s requirements.¹⁷ Additionally, the OIG team’s review found that examiners were diagnosing functional gastrointestinal disorders, one type of medically unexplained illness, without providing any findings to show their diagnoses were made in accordance with established medical principles.¹⁸

Confusing and Inconsistent Procedures in the VBA Manual Resulted in Claims Processors Making Determinations Unsubstantiated by the Overall Record and Not Requesting Medical Opinions When Required

For Gulf War claims, the team found that although VBA’s *Adjudication Procedures Manual* (the manual) generally reflects the relevant information in Title 38 of the *Code of Federal Regulations*, some procedures were confusing and contrary to regulatory requirements, court precedent, and other procedural guidance.¹⁹

¹⁷ 38 C.F.R. § 3.317.

¹⁸ 38 C.F.R. § 3.317.

¹⁹ 38 C.F.R. § 3.317; *Stewart v. Wilkie*, 30 Vet.App. 383 (December 20, 2018); *Dillon v. McDonald*, 2016 WL 3548138 (June 30, 2016); VA Manual 21-1, “General Information on Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317,” updated September 20, 2021, sec. VIII.ii.1.A; VA Manual 21-1, “Developing Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317,” updated March 14, 2019.

Specifically, the OIG team found VBA’s manual provided confusing guidance on

- the actions claims processors should take when an examiner identifies qualifying chronic disabilities in Gulf War claims that do not conform with the regulation’s definitions, or are contradicted by the overall evidence of record, and
- the requirement for a medical opinion explaining how the examiner determined whether the veteran has a qualifying chronic disability pattern.

The regulation instructs claims processors to view an examination in light of the overall evidence of record, and if an examination report does not contain sufficient detail, return the report as inadequate for evaluation purposes.²⁰ The OIG team’s claim review found numerous instances in which examiners identified undiagnosed and medically unexplained illnesses that did not meet the definitions found in 38 C.F.R. § 3.317 but were used by claims processors to award benefits. This occurred because the manual instructs claims processors to award benefits whenever the examiner identifies a qualifying disability, provided the veteran is otherwise eligible.²¹ Most claims processors interviewed by the OIG team understood this to be a requirement to award benefits based solely on the examiner’s determination without considering the overall evidence of record.

VA stated that its 2010 regulation update provides sufficient guidance to “enable medical professionals *to render medical opinions* (emphasis added) [on what disabilities constitute a medically unexplained illness].”²² Legal decisions have reinforced the need for a medical opinion and determined that such an opinion is required.²³ In *Stewart v. Wilkie*, the United States Court of Appeals for Veterans Claims stated that the “secretary has acknowledged that the issue of whether a veteran’s particular chronic multisymptom disability pattern is without a conclusive etiology must be determined on a case by case basis and *will require a medical opinion*” (emphasis added). The court further explained that if VA provides an examination, it must be adequate, and an opinion must support its conclusion with an analysis that can be considered and weighed against contrary opinions.²⁴

However, the manual provides confusing guidance regarding the need for an opinion. One procedure indicates that when a veteran with Gulf War service reports symptoms fitting the description of a medically unexplained illness, the claims processor should obtain a medical

²⁰ 38 C.F.R. § 4.2 (2023).

²¹ VA Manual 21-1, “Rating Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317,” updated July 14, 2016, sec. VIII.ii.1.C.

²² Compensation for Certain Disabilities Due to Undiagnosed Illnesses, 75 Fed. Reg. at 61,995.

²³ *Stewart v. Wilkie*, 30 Vet.App. 383; *Dillon v. McDonald*, 2016 WL 3548138.

²⁴ *Stewart v. Wilkie*, 30 Vet.App. 383. The US Court of Appeals for Veterans Claims provides judicial review of final decisions by the Board of Veterans’ Appeals (Board). The court’s precedents are binding on VBA.

opinion before proceeding with a decision.²⁵ Yet another procedure in the manual directs claims processors to inform the examiner to provide a medical statement explaining whether the disability pattern of undiagnosed illness or medically unexplained illness, but states that no medical opinion or rationale is required.²⁶ Although the latter is meant to serve as a reminder that no medical opinion is required to establish a connection to military service (a nexus opinion) because there is a presumption that Gulf War illnesses are service-connected, this guidance led to some examiners failing to provide the required explanation and claims processors not having information to determine whether the definitional requirements had been met.

What the OIG Recommended

The first of the OIG's five recommendations to the under secretary for benefits calls for updating the instructions provided to examiners for completing the Gulf War general medical examination and related procedures, including adding the definition of a medically unexplained illness and clarifying that a written explanation is required for undiagnosed or medically unexplained illness determinations. The OIG also recommended that the Gulf War general medical disability benefits questionnaires be updated in accordance with 38 C.F.R. § 3.317 to include the definitional requirements for medically unexplained illness and all clinical requirements for both undiagnosed and medically unexplained illnesses. Further, the OIG recommended to incorporate into the appropriate medical disability benefits questionnaires the diagnostic criteria for functional gastrointestinal disorders, requiring an explanation of whether the disorder is functional or structural. This should include a requirement that any necessary testing has been completed before examiners diagnose specific functional gastrointestinal disorders. Finally, the OIG recommended that VA's manual be updated to clearly state that all regulatory requirements must be met to award benefits and to reiterate that claims processors should make determinations based on the overall evidence of record.

²⁵ VA Manual 21-1, "General Information on Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317," updated September 20, 2021, sec. VIII.ii.1.A.

²⁶ VA Manual 21-1, "Developing Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317," updated March 14, 2019, sec. VIII.ii.1.B.

VA Comments and OIG Response

The under secretary for benefits concurred with all recommendations and provided acceptable action plans for implementation. The comments are provided in full in appendix D. The OIG will monitor VBA's progress and follow up on the implementation of the recommendations until all proposed actions are completed.



LARRY M. REINKEMEYER
Assistant Inspector General
for Audits and Evaluations

Contents

| | |
|---|----|
| Executive Summary..... | i |
| Abbreviations..... | x |
| Introduction..... | 1 |
| Results and Recommendations | 9 |
| Finding: VBA’s Gulf War Claims Process Did Not Ensure All Evidence Was Gathered to Meet Regulatory Requirements, Leading to Premature Decisions..... | 9 |
| Recommendations 1–5 | 25 |
| Appendix A: Scope and Methodology | 27 |
| Appendix B: Statistical Sampling Methodology | 30 |
| Appendix C: Monetary Benefits in Accordance with Inspector General Act Amendments | 34 |
| Appendix D: VA Management Comments..... | 35 |
| OIG Contact and Staff Acknowledgments..... | 38 |
| Report Distribution | 39 |

Abbreviations

| | |
|--------|----------------------------------|
| C.F.R. | Code of Federal Regulations |
| IBS | irritable bowel syndrome |
| OGC | Office of General Counsel |
| OIG | Office of Inspector General |
| OMB | Office of Management and Budget |
| VBA | Veterans Benefits Administration |



Introduction

Gulf War illness refers to a cluster of unexplained or ill-defined chronic symptoms that have been found in veterans deployed to the Persian Gulf during Operations Desert Storm and Desert Shield.²⁷ Pursuant to federal regulation, VA pays compensation to veterans disabled by Gulf War illness if their service in Southwest Asia resulted in a qualifying chronic disability.²⁸ A qualifying chronic disability cannot be attributed to any known clinical diagnosis by history, physical examination, and laboratory tests. There are two types of qualifying chronic disabilities: “undiagnosed illness” and “medically unexplained chronic multisymptom illness.”²⁹

Examining and diagnosing veterans thought to have Gulf War illness is challenging. A November 2020 study found medical providers for veterans with Gulf War illness had gaps in their understanding of the illness, even those with expertise on the topic.³⁰ These findings are reinforced by testimony the US Government Accountability Office provided to Congress.³¹ The testimony related that VA examiners found it difficult to complete Gulf War medical examinations because of the wide range of symptoms, and that it can be difficult to evaluate a veteran’s condition to determine if the symptoms indicate undiagnosed or medically unexplained illnesses.

During fiscal year 2021, VA paid compensation for service-related disabilities to 5.2 million veterans. Gulf War–era veterans accounted for more than half of these recipients. Due to the large population of veterans who could be eligible for compensation for Gulf War illness, the VA Office of Inspector General (OIG) conducted this review to determine whether the Veterans Benefits Administration (VBA) processes disability claims related to Gulf War illness in accordance with applicable requirements.³²

²⁷ VA War Related Illness and Injury Study Center, “Gulf War Illnesses,” accessed April 22, 2021, <https://www.warrelatedillness.va.gov/education/factsheets/gulf-war-illness-for-veterans.pdf>.

²⁸ 38 U.S.C. § 1117(a); 38 C.F.R. §§ 3.2 (2023), 3.317 (2023).

²⁹ 38 U.S.C. § 1117(a); 38 C.F.R. § 3.317. The regulation allows for compensation for veterans who served in Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

³⁰ Girija Kaimal and Rebekka Dietrerich-Hartwell, “Grappling with Gulf War Illness: Perspectives of Gulf War Providers,” *International Journal of Environmental Research and Public Health*, November 19, 2020, accessed March 4, 2021, <https://pubmed.ncbi.nlm.nih.gov/33227919>.

³¹ *Process for Identifying Conditions Presumed to be Service Connected and Challenges in Processing Complex Gulf War Illness Claims, Before the Subcommittee on Disability Assistance and Memorial Affairs, House Committee on Veterans’ Affairs*, 116th Cong. (December 9, 2020) (statement of Elizabeth Curda, Director, Education, Workforce, and Income Security, Government Accountability Office).

³² 38 C.F.R. § 3.2. VA defines the Gulf War period as beginning August 2, 1990, and extending to the present. See Appendix A for more information on the scope and methodology of this review.

Timeline of Regulatory Development

Nearly a quarter of veterans who served during the 1990–1991 Gulf War experienced an array of symptoms that led VA and others to investigate whether potential “Gulf War exposures” might have caused the symptoms.³³ Congress passed a law on November 2, 1994, that directed VA to begin providing compensation for veterans who served in Southwest Asia.³⁴ VA implemented the law by federal regulation in 1995. The regulation provided compensation for Persian Gulf veterans who exhibit objective indications of a chronic disability resulting from an illness or combination of illnesses that by history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.³⁵ The regulation also required that any covered disabilities exist for at least six months and manifest themselves to a degree of 10 percent or higher before December 31, 2026.³⁶ Since 1995, there have been numerous updates to the regulation that dictate how VA will pay compensation and to whom. Initially, only undiagnosed illnesses were included in the regulation.³⁷ In 2001, however, the VA added medically unexplained chronic multisymptom illnesses (hereafter referred to as medically unexplained illnesses) to the regulation as a separate qualifying chronic disability. In a 2003 update, VA further defined medically unexplained illnesses, explaining that

[medically unexplained illnesses] ... may be difficult for VA adjudicators to understand and apply consistently due to the highly technical medical aspects of the task of determining whether an illness meets the criteria of “[medically unexplained illnesses].” ... Therefore, this rulemaking clarifies this category of illnesses by defining the term.³⁸

In general, each update added more specificity. Figure 1 shows updates through 2011.

³³ The term “Gulf War exposures” appears in “Gulf War Illnesses.”

³⁴ Veterans Benefits Improvements Act of 1994, Pub. L. No. 103-446, §102, 108 Stat. 4645 (1994), 38 U.S.C § 1117.

³⁵ 38 C.F.R. § 3.317.

³⁶ 38 C.F.R. § 3.317. VA makes a determination about the severity of the disability based on the evidence submitted or obtained as part of the claim and rates the disability from 0 percent to 100 percent in 10 percent increments.

³⁷ “Compensation for Certain Undiagnosed Illnesses,” 60 Fed. Reg. at 6,663.

³⁸ Compensation and Pension Provisions of the Veterans Education and Benefits Expansion Act of 2001, 68 Fed. Reg. 34,539, 34,540 (June 10, 2003).

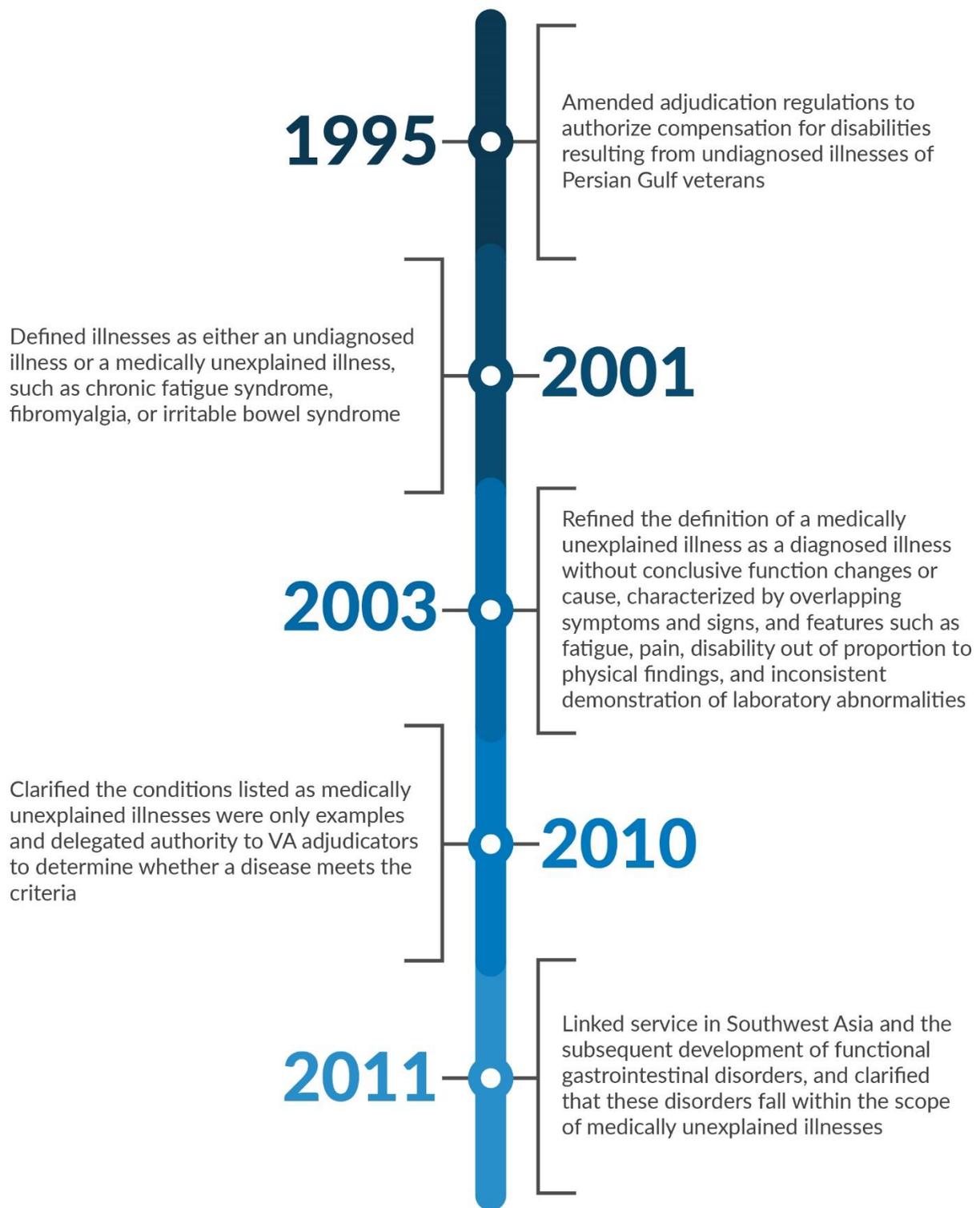


Figure 1. Timeline of changes to C.F.R.
Source: OIG analysis of regulatory development.

Notably, in the October 2010 update, VA sought to make clear that the conditions listed as medically unexplained illnesses—chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome (IBS)—were only examples, not an exhaustive list.³⁹ The update explained

The regulation sets forth clear and detailed standards to guide the determination as to what constitutes a [medically unexplained illness]. We believe the regulatory language provides sufficient guidance to enable medical professionals to render medical opinions on this issue and to enable VA adjudicators to decide this issue when it arises in individual cases.

The 2010 update also delegated to VA claims processors the authority to determine, on a case-by-case basis, whether a disease meets the criteria found in the regulation. The intent was for claims processors to evaluate Gulf War illness claims in the same manner as other types of claims.⁴⁰ Following the 2011 revisions, additional updates in 2016 and 2021 extended the time limits for a qualifying chronic disability to manifest.⁴¹

In August 2022, the President signed the Honoring Our PACT Act.⁴² This law provides health care and benefits to veterans exposed to toxic substances during their military service, including those who may be suffering from Gulf War illness. The act expands the eligibility for veterans who may suffer from Gulf War illness and will have a significant impact on the future processing of their claims, as many more veterans may be eligible for benefits under the regulation. This legislation has no direct bearing on the findings in this report as the selection of a statistical sample of claims for this review and related findings were made before the PACT Act was signed into law. However, this review remains relevant because although the PACT Act increases the number of veterans who may be eligible for benefits under the regulation, the requirements for identifying undiagnosed or medically unexplained illnesses were not affected by the PACT Act.⁴³

³⁹ Compensation for Certain Disabilities Due to Undiagnosed Illnesses, 75 Fed. Reg. 61,995, 61,996 (Oct. 7, 2010) (to amend 38 C.F.R. § 3.317).

⁴⁰ Compensation for Certain Disabilities Due to Undiagnosed Illnesses, 75 Fed. Reg. at 61,996.

⁴¹ Extension of the Presumptive Period for Compensation for Gulf War Veterans, 81 Fed. Reg. 71,384 (Oct. 17, 2016). Extension of the Presumptive Period for Compensation for Persian Gulf War Veterans, 86 Fed. Reg. 51,001 (Sept. 14, 2021). These two updates are not included in figure 1 as they were not substantive for this review, involving only the extension of the presumptive period for compensation for Gulf War veterans.

⁴² Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act, Pub. L. No. 117-168, 136 Stat. 1759 (2022).

⁴³ 38 C.F.R. § 3.317. The PACT Act permanently extended the period of eligibility and expanded the definition of a Persian Gulf veteran.

Regulatory and Procedural Requirements for Gulf War Illness Claims Processing

According to the current regulation, VA will pay compensation for objective indications of a qualifying chronic disability.⁴⁴ A qualifying chronic disability may be either an undiagnosed illness or a medically unexplained illness, both described in table 1.⁴⁵

Table 1. Two Types of Qualifying Chronic Disabilities

| Illness | Definition |
|-------------------------------|---|
| Undiagnosed illness* | A disability that cannot be attributed to any known clinical diagnosis by <ul style="list-style-type: none"> • history, • physical examination, and • laboratory tests |
| Medically unexplained illness | Diagnosed illness <ul style="list-style-type: none"> • without conclusive pathophysiology or etiology;** • characterized by overlapping symptoms and signs; and • exhibiting features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities |

Source: 38 C.F.R. § 3.317.

* An undiagnosed illness is a condition that does not follow a particular clinical course that can be generally predicted. An undiagnosed illness can be said to exist if the physician is unable to attribute a disability to a known clinical diagnosis. 60 Fed. Reg. 6,662 (Feb. 3, 1995).

** Pathophysiology refers to functional changes typically accompanying an illness; etiology refers to its cause.

Examples of medically unexplained illnesses include chronic fatigue syndrome, fibromyalgia, and functional gastrointestinal disorders. In addition to the general requirements that must be met for benefits for a medically unexplained illness, the regulation provides specific definitions for functional gastrointestinal disorders.⁴⁶ It defines them as “a group of conditions characterized by chronic or recurrent symptoms that are unexplained by any structural, endoscopic, laboratory, or other objective signs of injury or disease and may be related to any part of the gastrointestinal tract.” The regulation goes on to explain that the “diagnosis of specific functional gastrointestinal

⁴⁴ 38 C.F.R. § 3.317. “‘Objective’ indications of chronic disability include both ‘signs,’ in the medical sense of objective evidence perceptible to an examining physician, and other, non-medical indicators that are capable of independent verification.”

⁴⁵ 38 C.F.R. § 3.317.

⁴⁶ 38 C.F.R. § 3.317.

disorders is [to be] made in accordance with established medical principles.”⁴⁷ Structural gastrointestinal disorders, such as ulcerative colitis, Crohn’s disease, and gastroesophageal reflux disease, are considered organic or structural diseases characterized by abnormalities seen on x-ray, endoscopy, or through laboratory tests.⁴⁸ Structural gastrointestinal disorders are specifically excluded from consideration for benefits entitlement under the regulation.⁴⁹

Disability Compensation Claims Process

To apply the guidance and regulation requirements to processing a claim, VA follows the process shown in figure 2. VBA staff generally process veterans’ claims for Gulf War illness as they do other disability benefits claims. After a veteran submits a claim to VA, claims processors review the claim and assist the veteran in gathering evidence needed to evaluate it. Gathering evidence can include ordering medical examinations and requesting medical opinions if either or both are necessary. Claims processors later analyze the evidence and make rating decisions on the claim. A rating decision is a formal determination made by VBA regarding one or more issues of benefit entitlement. The rating decision states the decisions made, such as award or denial of benefits, and provides an explanation supporting each.⁵⁰

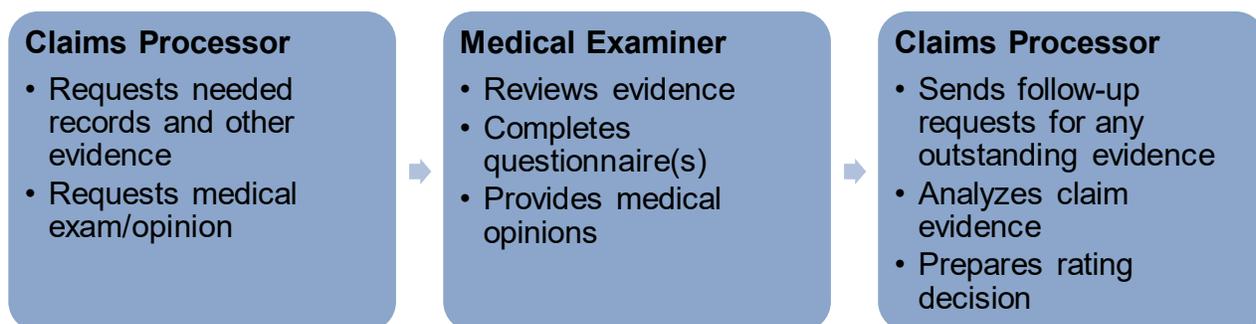


Figure 2. Claims decision process.

Source: VA OIG analysis of the Compensation Service’s process for deciding claims.

⁴⁷ 38 C.F.R. § 3.317 states that established medical principles generally require symptom onset of at least six months before diagnosis and the presence of symptoms sufficient to diagnose the specific disorder at least three months before diagnosis.

⁴⁸ VA Manual 21-1, “General Information on Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317,” updated September 20, 2021, sec. VIII.ii.1.A in *Adjudication Procedures Manual*.

⁴⁹ 38 C.F.R. § 3.317.

⁵⁰ VA Manual 21-1, “Completing the Rating Decision Narrative,” updated May 10, 2016, sec. V.iv.1.A.

VA Medical Examination and Opinion Process

When a claim is submitted, claims processors are required to help the claimant obtain any necessary medical examinations or opinions to substantiate it.⁵¹ In general, examinations help gather medical evidence to establish a veteran’s entitlement to benefits, such as information about diagnosis, onset, and etiology (cause). When requesting a medical examination or a medical opinion, VBA employees are required to complete an examination request by identifying all appropriate examination types and medical opinions for all claimed disabilities warranting an examination.

According to federal regulation, accurate and fully descriptive medical examinations are required.⁵² This requirement is emphasized in other federal regulations relating to VA’s examination process. For example, one regulation highlights the importance of complete examinations, noting that “when complete examinations are not conducted covering all systems of the body affected by disease or injury, it is impossible to visualize the nature and extent of the service connected disability.”⁵³ The regulation explains that an “incomplete examination is a common cause of incorrect diagnosis ... and leaves the Department of Veterans Affairs in doubt as to the presence or absence of disabling conditions at the time of the examination.”

To complete the requested examinations, medical examiners must use specific forms known as disability benefits questionnaires.⁵⁴ These forms are disease- and condition-specific and are used as a documentation tool to elicit the precise medical evidence needed to make decisions on claims. The examiner is asked to complete the questionnaires step-by-step, answer the questions posed, and provide additional information as required by examination findings. The completed questionnaires must have a definite and unambiguous description of the disability, if any, for each complaint or claimed condition. Common features of disability benefits questionnaires include a diagnosis section, medical history, objective findings, results of diagnostic testing performed, and a remarks section for any necessary explanation. Additional sections may be found on some questionnaires depending on the specialty involved.⁵⁵ Generally, the VA examination is intended to serve as part of the evidence that helps inform the claims processors’ decision-making and helps them apply regulations for evaluation purposes.⁵⁶

⁵¹ VA Manual 21-1, “Duty to Assist with Providing a Medical Examination or Opinion,” updated September 15, 2021, sec. IV.i.1.A.

⁵² 38 C.F.R. § 4.1 (2023).

⁵³ 38 C.F.R. § 4.42 (2023).

⁵⁴ VA Manual 21-1, “Examination Requests Overview,” updated March 1, 2021, sec. IV.i.2.A.

⁵⁵ VA Manual 21-1, “General Criteria for Sufficiency of Examination Reports,” updated September 15, 2021, sec. IV.i.3.A.

⁵⁶ VA Manual 21-1, “Examination Requests Overview.”

VA examiners also provide medical opinions when requested by the claims processors. Opinions are medical assessments on questions such as etiology or onset. Like an examination, opinions involve the application of the examiner's knowledge, experience, and judgment to a set of facts.⁵⁷ VBA's *Adjudication Procedures Manual* (the manual), a general guide for processing and adjudicating claims for compensation, pension, and related benefits for veterans and their dependents, explains that medical opinions must have a valid rationale. The rationale must include the reasons and basis for the opinion; support conclusions with an analysis that can be considered and weighed against contrary opinions; and provide not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two.⁵⁸ A medical opinion is not entitled to any weight if it only contains data and conclusions.⁵⁹

⁵⁷ VA Manual 21-1, "Principles of Reviewing and Weighing Evidence," updated September 24, 2019, sec. V.ii.1.A.

⁵⁸ VA Manual 21-1, "Prologue," updated September 14, 2020; VA Manual 21-1, "Principles of Reviewing and Weighing Evidence."

⁵⁹ *Stewart v. Wilkie*, 30 Vet.App. 383.

Results and Recommendations

Finding: VBA's Gulf War Claims Process Did Not Ensure All Evidence Was Gathered to Meet Regulatory Requirements, Leading to Premature Decisions

VBA's Gulf War illness claims process did not ensure that all requirements in VA regulations were met before claims processors decided the claim.⁶⁰ The OIG team identified errors, which VBA acknowledged, as well as procedural weaknesses that present a risk of making additional errors.

The OIG found that VBA prematurely decided 15 claims from a statistically valid sample of 65 claims. Based on this review, the OIG team estimated that approximately 3,200 of the 13,800 Gulf War illness claims (23 percent) completed from October 1, 2021, through March 31, 2022, were decided prematurely.⁶¹ Of the 3,200 claims, an estimated 1,900 decisions immediately affected veterans' benefits, resulting in at least \$5.1 million in improper overpayments prematurely paid for that six-month period.⁶² Some examples of these errors involved prematurely granting Gulf War illness benefits for veterans who

- did not serve in the specific geographical locations or did not have a disability that manifested to the degree of 10 percent or more required by 38 C.F.R. § 3.317;
- had diagnosable chronic conditions incorrectly identified as undiagnosed illnesses; or
- had conflicting medical evidence of record that was not considered.⁶³

⁶⁰ 38 C.F.R. §§ 3.317, 4.1, 4.2 (2023), and 4.42.

⁶¹ The sample size (65) was selected to result in a margin of error of 10 percent or less for the overall error rate projection. If the OIG repeated this audit with multiple sets of samples, the confidence intervals would differ for each sample but would include the true population value 90 percent of the time. See appendices A and B for more information on the scope and methodologies.

⁶² The Office of Management and Budget (OMB) defines federal payments as improper when they are paid in the incorrect amount, paid to an ineligible recipient. An overpayment, according to OMB, is a form of improper payment that "jeopardize[s] agency missions by diverting resources from their intended purpose." OMB, "Requirements for Payment Integrity Improvement," app. C in OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, March 5, 2021.

⁶³ 38 C.F.R. § 3.317. VA makes a determination about the severity of the disability based on the evidence submitted or obtained as part of the claim and rates the disability from 0 percent to 100 percent in 10 percent increments.

There were an additional estimated 1,300 decisions that had the potential to affect veterans' benefits; however, the decisions' impact could not be discerned or calculated.⁶⁴

The claims were prematurely decided because VA medical examination requests and disability benefits questionnaires do not consistently produce the information claims processors need to determine whether a veteran is eligible for Gulf War disability benefits per the regulation.⁶⁵ As a result, VBA lacked required evidence to properly decide these claims. Additionally, claims processors interviewed reported that VBA procedures are confusing, and the team found they are inconsistent with regulatory requirements.

The OIG team considered a decision in error when the evidence was not sufficient to decide the claim as the regulation requires. For these decisions, the OIG team provided a synopsis of the claims to VBA's quality assurance staff to review and provide comments. In cases for which the VA examinations did not contain the information needed to determine entitlement under the regulation, VBA agreed the decisions were in error. These involved some instances when the veteran did not meet the military service requirement, examiners improperly identified clinically diagnosed conditions as undiagnosed illnesses, or there was conflicting medical evidence of record that was not considered. Based solely on the claims from the OIG's sample that VBA agreed were processed incorrectly, if VBA continues to make errors at the same rate identified and at payment rates in effect at the time of this review, VBA will make premature decisions on an estimated \$25.6 million in disability benefit payments for Gulf War claims from fiscal year 2022 through one year following the publication of the related recommendations in this report. However, if VBA implements the OIG team's recommendations in less than a year from publication, it could improve the accuracy of these decisions and reduce payment errors.⁶⁶

The process for requesting and conducting Gulf War medical examinations constitutes an ongoing risk of errors resulting in premature decisions. The Gulf War exam requests did not provide all the necessary definitions for examiners, and the questionnaires did not produce all the medical evidence needed to determine whether the regulatory requirements were met.

While other evidence of record can be used by claims processors to determine benefit entitlement, VA examinations are the primary evidence used by claims processors to determine if

⁶⁴ Errors that had the potential to affect veterans' compensation benefits payments occurred when claims processors prematurely decided claims before completing all required procedures, such as returning medical exams to obtain clarification when needed. In these cases, the review team could not determine the monetary effect of the errors.

⁶⁵ 38 C.F.R. § 3.317.

⁶⁶ The estimate is an extrapolation of the six-month estimate of at least \$5.1 million in improper payments as noted in table B.3. It is for the review period of October 2021 through one year after the publication of this report. Because the OIG typically expects all recommendations to be fully implemented within one year following publication, the estimate for monetary impact is 2.5 years and highlights the significant impact if the recommendations are not fully implemented. See appendix C for more information regarding monetary benefits in accordance with section 405 of the Inspector General Act.

veterans are eligible for benefits under 38 C.F.R. § 3.317. However, the OIG team found the following shortcomings with examinations:

- Medically unexplained illnesses are being identified without findings that show they meet the specific diagnostic criteria of the regulation.
- Gastrointestinal conditions are being identified as medically unexplained illnesses without a determination as to whether they are functional or structural.
- Examination findings do not support that the diagnoses of specific functional gastrointestinal disorders, such as IBS, are made according to established medical principles.
- Determinations of whether the veteran has a qualifying chronic disability are made without the required explanation or medical opinion.

Based on the statistical sample review, the OIG team estimated a total of 5,500 of the 13,800 cases (40 percent) had insufficient medical examinations.⁶⁷ The OIG team is highlighting the risk of premature decisions when using these insufficient examinations because they do not provide claims processors with the information needed to determine whether requirements of the regulation have been met.

What the OIG Did

To ascertain whether VBA accurately processes disability compensation claims related to Gulf War illness, the team reviewed applicable laws, regulations, and procedural guidance. The team assessed the processing accuracy of a statistically selected sample of 65 Gulf War illness claims completed from October 1, 2021, through March 31, 2022, which contained at least one of three indicators that could show potential entitlement under the regulation: an “environmental hazards” special issue indicator, a Gulf War general medical examination questionnaire, or a diagnostic code reflecting service in the Gulf War.⁶⁸ However, not all claims reviewed resulted in a determination that the veteran suffered from an undiagnosed illness or a medically unexplained illness. To gain an understanding of VBA’s guidance for processing Gulf War illness claims, the team interviewed staff at two regional offices as well as central office staff,

⁶⁷ The 5,500 claims include the estimated 3,200 claims decided prematurely; the remaining estimated 2,300 claims are those where the examination would be deficient, but the end result was not necessarily premature.

⁶⁸ Because this is a sample of a specific type of complex claim, Gulf War illness, there is a higher risk of error than for a broader review that includes claims that are not complex or raise a different type of complexity. As a result, the team’s findings are not intended to represent VBA’s overall claims-processing accuracy rate for other types of claims.

including executives in charge at both the Medical Disability Examination Office and VBA's Compensation Service.⁶⁹

The OIG's finding in this report is based on the following determinations:

- VBA decided some Gulf War illness claims prematurely.
- Examination requests and disability benefits questionnaires do not gather all information needed to make processing compliant with requirements.
- Confusing and inconsistent procedures in the VBA manual resulted in claims processors making determinations unsubstantiated by the overall record and not requesting medical opinions when required.

VBA Decided Some Gulf War Illness Claims Prematurely

The regulation governing compensation for Gulf War illness contains specific requirements for entitlement to benefits. In addition to the definitional requirements for undiagnosed and medically unexplained illnesses, the regulation requires that the veteran must have served on active duty in the Southwest Asia theater of operations and that resulting disabilities must manifest to a degree of 10 percent or higher.⁷⁰ Based on a statistical sample, the OIG team estimated that 3,200 claims decided by VBA had insufficient evidence to show that all the regulatory requirements were met. Example 1 highlights an improperly decided claim.

Example 1

A veteran submitted a claim for a condition commonly identified as a Gulf War illness. There was no evidence to show that the veteran served on active duty in Southwest Asia; however, entitlement to benefits was granted for the condition as a Gulf War illness. As active-duty service in Southwest Asia was not verified, the claims processor should have denied the claim. Not doing so resulted in an overpayment of approximately \$2,500.

The OIG team also found instances in which the medical examinations were inadequate because they did not contain the necessary information (such as whether there were objective indicators of a disability or if the veteran suffers from a functional or structural gastrointestinal disorder) for a claims processor to decide the claim according to regulatory requirements.

Example 2 shows one type of the shortcomings identified by the OIG team.

⁶⁹ The mission of the Medical Disability Examination Office is to support VA's disability claims process by administering VBA's contract medical disability examination program worldwide to ensure veterans receive timely and high-quality examinations. Compensation Service staff oversee disability compensation to veterans and assess nationwide claims-processing quality to increase accuracy and consistency, develop and oversee training for VBA claims processors, and issue policy and procedures related to disability compensation.

⁷⁰ 38 C.F.R. § 3.317.

Example 2

A veteran submitted a claim for IBS. An examiner provided a diagnosis of IBS and determined that it is a medically unexplained chronic multisymptom illness. However, private and VA treatment records show the veteran sought treatment for and was diagnosed with Crohn's disease, a structural inflammatory bowel disease that is excluded from benefits under the regulation and was undergoing therapy for this condition. The medical records were not discussed in the report by the examiner. A blood test was the only laboratory testing completed. No further laboratory or diagnostic testing was completed or discussed to show support for the examiner's determination of IBS as a medically unexplained illness. The examiner did not provide an explanation for how a diagnosis of IBS was made, which was needed because evidence showing Crohn's disease would explain the veteran's symptoms. The evidence should have been clarified before compensation was awarded. Because it was not, the grant resulted in an overpayment of approximately \$5,500.

Examination Requests and Disability Benefits Questionnaires Do Not Gather All Information Needed to Make Processing Compliant with Requirements

The errors found in the reviewed claims signaled an underlying procedural issue—the ongoing use of insufficient examinations to determine entitlement for a Gulf War illness. VBA's examination process does not adequately identify the requirements for qualifying chronic disabilities or gather all the information needed for claims processors to assess whether those requirements have been met.

As stated earlier, the regulation outlines specific requirements for the two types of qualifying chronic disabilities—undiagnosed illness and medically unexplained illness—and requires objective indications of a disability. Undiagnosed illnesses must be disabilities that by history, physical examination, and laboratory tests cannot be attributed to a known clinical diagnosis. For medically unexplained illnesses, they must be multisymptom illnesses without conclusive etiology or pathophysiology; be characterized by overlapping symptoms and signs; and have features such as fatigue, pain, disability out of proportion with physical findings and inconsistent demonstration of laboratory abnormalities.⁷¹

⁷¹ 38 C.F.R. § 3.317.

Functional gastrointestinal disorders have even more stringent criteria under 38 C.F.R. § 3.317. A functional gastrointestinal disorder is defined as

a group of conditions characterized by chronic or recurrent symptoms that are unexplained by any structural, endoscopic, laboratory, or other objective signs of injury or disease and may be related to any part of the gastrointestinal tract. ... Diagnosis of specific functional gastrointestinal disorders is [to be] made in accordance with established medical principles.

VBA's manual further outlines that functional gastrointestinal diseases do not include structural gastrointestinal diseases, such as ulcerative colitis and Crohn's disease, as these conditions are considered organic or structural diseases characterized by abnormalities seen on x-ray, endoscopy, or through laboratory tests.⁷²

However, the exam requests by claims processors and questionnaires completed by examiners do not include sufficient information to ensure the regulatory criteria are met. The OIG team estimated that for 5,500 claims, the related medical examinations did not contain the necessary information for a claims processor to make a decision in accordance with regulatory requirements. Example 3 highlights a case in which VBA was at risk of prematurely granting entitlement because the exam does not support the decision.

Example 3

A veteran submitted a claim for unexplained skin rashes. The veteran reported not having been treated for the skin condition, which consists of spots on the face and periodic breakouts on the arms and legs, usually resulting in itching. The medical professional conducting the exam provided a diagnosis of pruritis (itchy skin). There is no evidence that any laboratory or diagnostic testing was completed. The examiner determined without explanation that pruritis is a medically unexplained illness. There is no evidence to show that the diagnosed illness meets these regulatory requirements: "without conclusive pathophysiology or etiology," or that the condition is "characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities." Additionally, there is no evidence to show the condition is multisymptomatic, as pruritis is a single symptom. Even though the claim was granted, claims processors were at risk of making a premature decision when determining that entitlement was warranted under the regulation because the evidence gathered by the examination does not address all the regulatory requirements.

⁷² VA Manual 21-1, "General Information on Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317."

Examination Requests Lack Critical Details

To determine on a case-by-case basis whether a disease meets the definitional criteria outlined in the regulation, claims processors request a medical examination and provide examiners with set instructions on what is needed for a claims processor to determine benefit entitlement.⁷³ In order for the language in the instructions to provide guidance that “[enables] medical professionals to render medical opinions,” it must include the definition of medically unexplained illnesses.⁷⁴ However, the instructions only include the definition of an undiagnosed illness, not the definition of a medically unexplained illness. In lieu of a definition, the instructions cite three examples of medically unexplained illnesses: chronic fatigue syndrome, fibromyalgia, and IBS.⁷⁵ The instructions provide no further explanation of what constitutes a medically unexplained illness or the regulation’s special requirements for a functional gastrointestinal disorder.⁷⁶ As a result, examiners are left without clear instructions on how to categorize qualifying chronic disabilities and are classifying conditions as medically unexplained illnesses that do not meet the regulation’s requirements—including structural gastrointestinal disorders like Crohn’s disease that are explicitly excluded from entitlement to benefits under the regulation.⁷⁷

Disability Benefits Questionnaires Do Not Provide All the Evidence Needed to Ensure Regulatory Requirements Are Met

Examiners must complete disability benefits questionnaires to document the findings of the examination. Disability benefits questionnaires used as part of the examination process for evaluating claims for Gulf War illnesses do not ask specific questions that would show how a condition meets the requirements of the regulation. Without this information, claims processors lack the evidence needed to determine benefit entitlement.⁷⁸

Regulatory Requirements Related to Undiagnosed Illness and Medically Unexplained Illness

In addition to defining undiagnosed illness and medically unexplained illness, the regulation requires objective indications of a chronic disability. However, the Gulf War general medical examination questionnaire, used by examiners to evaluate veterans for potential Gulf War illnesses, does not include questions that elicit this necessary information.

⁷³ VA Manual 21-1, “Developing Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317,” updated March 14, 2019, sec. VIII.ii.1.B.

⁷⁴ Compensation for Certain Disabilities Due to Undiagnosed Illnesses, 75 Fed. Reg. at 61,995.

⁷⁵ VA Manual 21-1, “Developing Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317.”

⁷⁶ 38 C.F.R. § 3.317.

⁷⁷ 38 C.F.R. § 3.317.

⁷⁸ 38 C.F.R. § 3.317.

The OIG team’s analysis of the statistical sample of 65 claims found instances when examiners misidentified diagnosed conditions as undiagnosed illnesses. According to the regulation, a condition can only be considered an undiagnosed illness if it cannot be “attributed to a known clinical diagnosis.”⁷⁹ The questionnaire does not ask specific questions about laboratory testing or other potential diagnoses, nor does it ask the examiner to explain why the veteran’s symptoms could not be attributed to a known clinical diagnosis.

The questionnaire also does not define or ask the necessary questions for claims processors to determine whether a veteran has a medically unexplained illness. The questionnaire does not address whether the veteran has a diagnosed illness that

- is without conclusive pathophysiology;
- is characterized by overlapping symptoms and signs; and
- has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities.⁸⁰

Claims processors and quality review specialists informed the team that the Gulf War general medical examination questionnaire provides them little to no value for making a decision. Including the regulatory requirements for undiagnosed illness and medically unexplained illness in the questionnaires and requiring a sufficient explanation would assist examiners in making disability pattern determinations and assist claims processors in assessing whether regulatory requirements are met for benefit entitlement.

Regulatory Requirements Related to Diagnosing Functional Gastrointestinal Disorders

Even for functional gastrointestinal disorders, which have more stringent criteria under 38 C.F.R. § 3.317, the questionnaires do not elicit important information. The requirements allow entitlement to benefits only for functional, not structural, gastrointestinal disorders.⁸¹ Functional gastrointestinal disorders must be unexplained by any structural, endoscopic, laboratory, or other objective signs of injury or disease and may be related to any part of the gastrointestinal tract. Yet the questionnaires do not

- ask whether the disorder is functional or structural, or

⁷⁹ 38 C.F.R. § 3.317.

⁸⁰ Pathophysiology is the functional changes that accompany a particular syndrome or disease. Merriam-Webster, “pathophysiology,” accessed February 2, 2023, <https://www.merriamwebster.com/dictionary/pathophysiology>; 38 C.F.R. § 3.317.

⁸¹ 38 C.F.R. § 3.317.

- require the examiner to discuss what tests were completed to rule out structural gastrointestinal disabilities.

Neither the Gulf War general medical examination nor the questionnaire used to evaluate intestinal conditions like IBS includes a question about whether a gastrointestinal disorder is functional or structural.⁸² During the review, the OIG team did not find any claims by a veteran with gastrointestinal symptoms for which the examiner conducted any testing to rule out, or otherwise discuss, whether the veteran's condition was due to a structural disorder. When examiners diagnose functional gastrointestinal disorders, such as IBS, without the necessary testing, they are not following established medical principles.

Examiners interviewed by the OIG team generally stated that to classify a condition as structural versus functional, testing would need to have been completed. One examiner explained that actual structural testing results, such as imaging and endoscopy results, would be needed to determine whether a condition is structural. Another examiner said that to classify a disability as a structural disorder would require having had some form of testing and looking into the bowel.

When asked how examiners should assess whether a condition is structural or functional, VBA's Medical Disability Examination Office provided this written response:

Based on the history and medical records, the examiner should be able to reliably determine whether the gastrointestinal condition is functional or structural. *Structural conditions will demonstrate an abnormality on diagnostic evaluation, e.g., endoscopy or other testing* (emphasis added). Functional disorders are based on the gastrointestinal tract appearing normal but having an abnormal function.

The Medical Disability Examination Office also explained that examiners should review all the available medical records, take a thorough history, and corroborate all the relevant information before rendering the medical opinion.

Interviews with claims processors also highlighted the importance of establishing whether gastrointestinal conditions are structural or functional. Nearly all the claims processors interviewed indicated that, if an examiner identified a gastrointestinal disorder as a medically unexplained illness, the claims processor would need to determine if the condition is structural or functional. Claims processors also explained that the intestinal disorders questionnaire does not ask for this information, and that they would have to send the examination back to the examiner or look up this information through an internet search. Quality review specialists interviewed also said that whether a condition is functional or structural is information the examiner needs to provide. If it is not in the questionnaire responses, a quality review specialist said claims processors should return the examination. However, as the manual instructs claims processors to award benefits if the examiner identifies a disability pattern as an undiagnosed illness or

⁸² 38 C.F.R. § 3.317.

medically unexplained illness, claims processors typically determine entitlement based on this identification without ensuring that regulatory requirements are met.

While the manual lists some of the structural disabilities excluded under the regulation, the list is not all-inclusive. Many claims processors indicated that having information on whether a particular condition is structural or functional on the questionnaire would be helpful, as it would prevent them from having to try and determine this on their own or sending the examination back for clarification.

VA regulation and procedures allow for functional gastrointestinal disorders to be considered medically unexplained illnesses.⁸³ However, according to the regulation, “Diagnosis of specific functional gastrointestinal disorders is made in accordance with established medical principles, which generally require symptom onset of at least [six] months prior to diagnosis and the presence of symptoms sufficient to diagnose the specific disorder at least [three] months prior to diagnosis.”⁸⁴ The most commonly diagnosed functional gastrointestinal disorder found in the claim review was IBS.

The Veterans Health Administration *Compensation and Pension Disability Examinations Clinician’s Guide* explains that IBS is defined as recurrent abdominal pain, on average, at least one day per week in the last three months, associated with two or more of the following criteria:

- Related to defecation
- Associated with a change in stool frequency
- Associated with a change in stool form (appearance)

A clinical diagnosis of IBS requires the meeting of symptom-based diagnostic criteria and a limited evaluation to exclude underlying organic disease.⁸⁵

The OIG team’s review found that examiners were diagnosing functional gastrointestinal disorders such as IBS without identifying any evidence or providing an explanation in the examination findings as to how they reached this diagnosis or whether it was made in accordance with established medical principles. In many cases, examiners did so despite the evidence of record showing that the veteran suffered from structural gastrointestinal disorders that would exclude the condition from eligibility for benefits under the regulation. Unlike chronic fatigue syndrome or fibromyalgia, which have specific disability benefit questionnaires that outline the

⁸³ 38 C.F.R. § 3.317.

⁸⁴ 38 C.F.R. § 3.317.

⁸⁵ Veterans Health Administration Office Disability and Medical Assessment, *Compensation and Pension (C&P) Disability Examinations Clinician’s Guide*, February 15, 2021. The guide uses the Rome IV diagnostic criteria, the “consensus definition of functional gastrointestinal disorders and given diagnostic criteria.” Per M. Hellstrom and Peter Benno, “The Rome IV: Irritable bowel syndrome – A functional disorder,” *Best Practice & Research Clinical Gastroenterology*, 40 (June 1, 2019): 101634, <https://doi.org/10.1016/j.bpg.2019.101634>.

diagnostic criteria for these disabilities, IBS has no separate questionnaire. Neither the Gulf War general medical examination nor the intestinal conditions questionnaire contains the generally accepted diagnostic criteria. Example 4 illustrates a flawed IBS diagnosis.

Example 4

In one case reviewed, the evidence demonstrated that the examiner diagnosed IBS based solely on the veteran's reported history despite clear evidence in the veteran's treatment records showing the gastrointestinal symptoms were the result of other factors, including gall bladder removal surgery and chronic alcohol dependence.

Multiple examiners interviewed by the OIG team stated that if there are no medical records or diagnostic testing available for a claimed medically unexplained illness such as IBS, a definitive diagnosis should not be made because of the requirement to rule out other conditions. One examiner stated that she would not diagnose IBS based solely on the veteran's reported gastrointestinal symptoms, as further investigation with testing would need to be performed.

The OIG team found that examiners were providing initial diagnoses of IBS as part of the VA examination process. However, the VA examination process does not elicit the evidence needed to ensure a diagnosis of IBS is appropriate or is made in accordance with established medical principles. When it comes to diagnosing IBS, VBA's Medical Disability Examination Office explained, "The diagnostic evaluation for IBS requires extensive invasive evaluation of an individual that is outside of the scope of a compensation and pension examination as many other conditions must be considered in the list of differential diagnosis." This is significant because in any case where no evidence was submitted to support a diagnosis of IBS prior to the VA examination, rendering a diagnosis of IBS solely based on the results of that examination would not be appropriate.

Confusing and Inconsistent Procedures in the VBA Manual Resulted in Claims Processors Making Determinations Unsubstantiated by the Overall Record and Not Requesting Medical Opinions When Required

The purpose of VBA's manual is to summarize or restate in plain language the applicable law, clarify any ambiguities, and provide a picture of the adjudication process that is reasonably complete and easy to understand and apply.⁸⁶ The manual explains that statutes and regulations take precedence over the procedural guidance it provides.⁸⁷ Both the regulation and the manual

⁸⁶ VA Manual 21 1, "Prologue."

⁸⁷ VA Manual 21-1, "Prologue."

clearly state that claims processors are to review examinations, return them if they are inadequate, and make determinations based on the entire evidence of record.⁸⁸

For Gulf War claims, the OIG team found that although the manual generally reflects the information in the regulation, some procedures proved confusing. As applied, they were contrary to regulatory requirements, court precedent, and other procedural guidance.

Review of Evidence

According to the manual, when reviewing any claims for disability compensation (not only those for Gulf War illness), claims processors perform a series of analytical steps:

- Determine what facts are required and what standard of proof applies based on the criteria for entitlement to the specific benefit sought and the procedural issue.
- Determine the probative value of evidence that bears on the entitlement standard or procedural issue.
- Discuss and apply VA guidance (including court precedents).
- Resolve questions of relative weight or persuasiveness when there are various items of evidence that have been determined to have probative value in order to find facts.
- Apply the found facts to draw corresponding conclusions of law necessary to support the decision outcome for the benefit sought.
- Clearly explain why the evidence is found to be persuasive or unpersuasive.⁸⁹

Federal regulation also instructs claims processors to view an examination in light of the overall evidence of record. The regulation goes on to state that if a diagnosis is not supported by the findings on the examination report or if the report does not contain sufficient detail, it is the claims processor's responsibility to return the report as inadequate for evaluation purposes.⁹⁰

The manual directs what action the claims processor should take based on the examiner's determination of the disability pattern supported by the exam results. In contrast to the requirement to view examinations in light of the overall evidence of record, the manual states that if the examiner determines the veteran's disability pattern is consistent with an undiagnosed or medically unexplained illness, the claims processor should award benefits if the veteran is otherwise eligible.⁹¹ In a written response, the Compensation Service informed the OIG team

⁸⁸ 38 C.F.R. § 4.2; VA Manual 21-1, "Insufficient Examinations," updated September 15, 2021, sec. IV.i.3.C; VA Manual 21-1, "Principles of Reviewing and Weighing Evidence."

⁸⁹ VA Manual 21-1, "Principles of Reviewing and Weighing Evidence."

⁹⁰ 38 C.F.R. § 4.2.

⁹¹ VA Manual 21-1, "Rating Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317," updated July 14, 2016, sec. VIII.ii.1.C.

that “otherwise eligible” refers to the additional required elements before benefits can be awarded—a veteran’s qualifying service and the disability being at least 10 percent disabling or higher.

Most claims processors interviewed said they understood the actions outlined in the manual as a requirement to award benefits whenever an undiagnosed illness or medically unexplained illness is identified by the examiner. The effect is that claims processors are accepting examiners’ designations of the disability pattern at face value and making findings of fact or drawing conclusions of law without considering the overall evidence of record. This has led to decisions being made without applying regulatory requirements or court precedent.

Need for a Medical Opinion or Explanation

The 2010 regulation update and court decisions interpreting the regulation have reinforced the need for medical opinions for Gulf War claims.⁹² After updating the regulation, VA stated that the guidance is now sufficient to enable medical professionals to render medical opinions on what disabilities constitute a medically unexplained illness and to enable claims processors to decide this issue when it arises in individual cases.⁹³ In *Stewart v. Wilkie*, the United States Court of Appeals for Veterans Claims stated that the “secretary has acknowledged that the issue of whether a veteran’s particular chronic multisymptom disability pattern is without a conclusive etiology must be determined on a case by case basis and *will require a medical opinion* (emphasis added).”⁹⁴ The court further explained that if VA provides an examination, it must be adequate, and an opinion must support its conclusion with an analysis that can be considered and weighed against contrary opinions.⁹⁵

However, the manual provides confusing guidance regarding the need for an opinion. One procedure indicates that when a veteran with Gulf War service reports symptoms fitting the description of a medically unexplained illness, the claims processor should obtain a medical opinion before proceeding with a decision.⁹⁶ When an opinion is obtained, the manual requires the opinion to be properly supported by a valid rationale.⁹⁷ The purpose of the VA medical examination is to provide claims processors with the evidence needed to make a decision on the claim.⁹⁸ Another manual procedure added in 2015 directs the claims processor to inform the

⁹² *Stewart v. Wilkie*, 30 Vet.App. 383; *Dillon v. McDonald*, 2016 WL 3548138 (June 30, 2016); Compensation for Certain Disabilities Due to Undiagnosed Illnesses, 75 Fed. Reg. at 61,995; 38 C.F.R. § 3.317.

⁹³ Compensation for Certain Disabilities Due to Undiagnosed Illnesses, 75 Fed. Reg. at 61,995.

⁹⁴ The US Court of Appeals for Veterans Claims provides judicial review of final decisions by the Board of Veterans’ Appeals. The court’s precedents are binding on VBA.

⁹⁵ *Stewart v. Wilkie*, 30 Vet.App. 383.

⁹⁶ VA Manual 21-1, “General Information on Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317.”

⁹⁷ VA Manual 21-1, “Insufficient Examinations.”

⁹⁸ VA Manual 21-1, “Duty to Assist with Providing a Medical Examination or Opinion.”

examiner to provide a medical statement explaining whether the disability pattern fits that of undiagnosed illness or medically unexplained illness, but specifically states that no medical opinion or rationale is required. The second provision appears to contradict both the purpose of providing medical opinions and other procedures in the manual when making claims decisions related to medical conditions (as opposed to establishing a connection to military service).⁹⁹

However, the manual change made in 2015 regarding the second provision does not apply to overall medical opinions being required and does not negate the need for them. Instead, the following language in that second provision that was added to Gulf War illness examination requests after 2015 narrowly applies to claims processors not needing a medical opinion to prove the claimed disability was connected to or has a “nexus” to the claimant’s military service. Service connection or nexus opinions are typically required when there is no presumption based on the area and time of military service. Because there is a presumption that Gulf War illnesses are service-connected, no such nexus opinion was needed.

The 2015 change to the manual is linked to a nexus opinion by the explicit language “caused by service in [the Southwest] theater of operations.”¹⁰⁰

If, after examining the Veteran and reviewing the claims file, you determine that the Veteran’s disability pattern is either (1) an undiagnosed illness; or (2) a diagnosable but [medically unexplained illness] of unknown etiology, then no medical opinion or rationale is required as these conditions are presumed to be caused by service in the Southwest Asia theater of operations.

The purpose of this change was to ensure that claims processors do not erroneously request nexus opinions that provide medical evidence of a connection between the claimed in-service injury or disease and the current disability. On the 2015 language, the analysis of the VA Office of General Counsel (OGC) is consistent with the OIG’s analysis. In particular, VA OGC has explained that the 2015 update only applies to nexus opinions, and that it only relieves examiners of providing a nexus opinion on their determination of a medically unexplained illness.

Despite the intent being to prevent unnecessary nexus opinions, the manual’s instruction resulted in many examiners not providing any explanation at all as to why they decided that a disability was an undiagnosed or medically unexplained illness. Although court precedent requires a medical opinion for medically unexplained illnesses and the manual requires that examiners provide a medical statement explaining the veteran’s disability pattern, the OIG team’s claim review found numerous instances of examiners providing only a conclusory statement. The example highlighted in Figure 3 provides an instance where the examiner merely reproduced the disability pattern type instead of providing the required explanation.

⁹⁹ VA Manual 21-1, “Developing Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317.”

¹⁰⁰ VA Manual 21-1, “Developing Claims Based on Service in Southwest Asia Under 38 C.F.R. 3.317.”

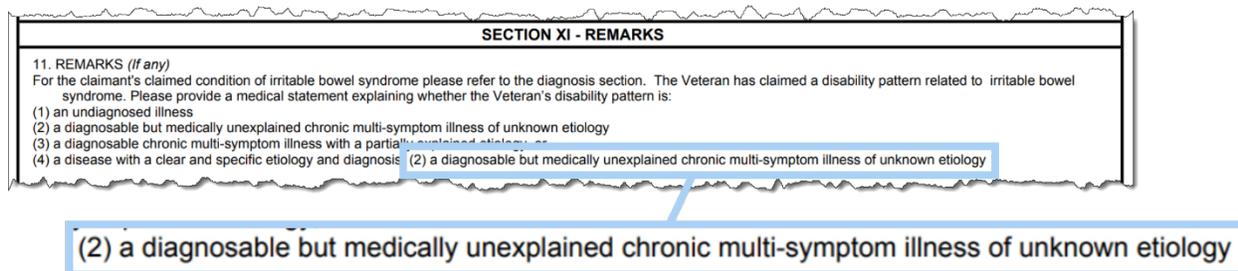


Figure 3. Example of an examiner’s medical statement regarding a veteran’s disability pattern.

Source: Veterans Benefits Management System e-folder.

The OIG team found no medical explanation or opinion was provided in 24 of 33 claims in which the examiner determined that the veteran had an undiagnosed or medically unexplained illness. Thus, in some cases, no information is provided to explain to claims processors whether the definitional requirements have been met.¹⁰¹

The OIG team’s claim review found numerous instances (like that in example 5) in which examiners identified undiagnosed and medically unexplained illnesses that did not meet the regulation’s definitions but claims processors still awarded benefits.

Example 5

A veteran with service in the Southwest Asia theater of operations submitted a claim for a heart condition. The veteran’s medical records showed the veteran was admitted to a private hospital for ventricular tachycardia, a clinically diagnosable condition. An examination and opinion were requested by the claims processor to determine if the veteran’s heart condition represented a chronic disability pattern. On examination, the examiner stated the veteran’s sustained ventricular arrhythmia is an undiagnosed illness because the specific cause of this clinically diagnosed condition was unknown. No further explanation was given to justify the conclusion that the veteran’s disability pattern was an undiagnosed illness. Benefits were granted for ventricular arrhythmia despite the regulation clearly defining an undiagnosed illness as one that cannot be attributed to any known clinical diagnosis.¹⁰²

Examiners (like the one in example 6) merely stated that a disability is an undiagnosed or medically unexplained illness. In effect, examiners checked the box to label the disability pattern for the condition examined, instead of providing sufficient detail for claims processors to make a fully informed decision.

¹⁰¹ The requirements are set out in 38 C.F.R. § 3.317.

¹⁰² 38 C.F.R. § 3.317.

Example 6

A veteran with service in the Southwest Asia theater of operations submitted a claim for migraine headaches. An examination and opinion were requested to determine if the veteran's migraine headaches represented a chronic disability pattern. On examination, the examiner diagnosed acute intermittent tension headaches and stated it is a diagnosable but medically unexplained chronic multisymptom illness of unknown etiology. No explanation for the examiner's determination was provided.

Senior VBA staff also seemed uncertain about the correct interpretation of the procedures regarding the need for a medical opinion. The chief of the Compensation Service Procedures Manual staff and the assistant director of its policy staff stated they could not answer why there is a procedure that does not require an explanation from an examiner for the disability pattern determination, as the procedure predated them. The assistant director of the Compensation Service's policy staff informed the OIG team that the conclusory medical statement (with no supporting facts) on the disability pattern *is* the medical opinion or explanation. The view of the assistant director conflicts with the manual, which explains that medical opinions must have a valid rationale that includes the reasons and bases for the opinion and supports conclusions with an analysis that can be considered and weighed against contrary opinions. The rationale must provide not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two. A conclusory statement that provides no support does not meet these requirements for a medical opinion. It is also inconsistent with court precedent, which requires a medical opinion with supporting rationale concerning any determination of medically unexplained illness. The claims processor does not have adequate information that a medical opinion would provide to indicate whether the illness is consistent with the regulatory requirements for Gulf War illnesses. Acceptance of an examiner's determination without a medical opinion is of particular concern because claims processors are awarding benefits based only on the examiner's statement that the veteran suffers from an undiagnosed or medically unexplained illness. This practice increases the risk of premature and inaccurate decisions.

Conclusion

VA regulations set out specific requirements that must be met for veterans to receive compensation for Gulf War illnesses. VA has a duty to assist veterans in gathering the evidence needed to support their claims, which includes providing a thorough and adequate medical examination.¹⁰³ However, the VBA instructions for conducting medical examinations and reporting the findings do not yield sufficient information for claims processors to consistently

¹⁰³ 38 C.F.R. § 4.42; *Barr v. Nicholson*, 21 Vet.App. 303, 311 (June 15, 2007); *Dillon v. McDonald*, 2016 WL 3548138.

determine veterans' eligibility for benefits. Examiners in many cases simply identified disabilities as undiagnosed or medically unexplained illnesses without providing the necessary explanation. This lack of information is compounded by confusing procedures that claims processors have interpreted to mean that no medical opinion or explanation is required. Consequently, claims processors were found to have sometimes failed to return inadequate examinations and instead to have accepted examiners' statements. Failure to evaluate the claim based on all the evidence of record has allowed errors to go undetected.

As a result, an estimated 3,200 claims (based on the OIG sample claim review) were decided before VBA staff ensured that regulatory requirements for service and disability level were met, whether a condition met the criteria for a qualifying chronic disability, or conflicting evidence of record was considered. An estimated 1,900 of these claims resulted in veterans' receiving benefits prematurely. If VBA continues to make errors at the rate identified and at payment rates in effect at the time of this review, VBA will issue an estimated \$25.6 million for inaccurately processed Gulf War illness claims from fiscal year 2022 through one year following the publication of the related recommendations in this report.

Overall, the OIG team estimated that 5,500 claims completed from October 1, 2021, through March 31, 2022, contained medical examinations without adequate evidence. This does not mean that those veterans were not eligible for the benefits they received, only that the examinations did not capture the evidence needed by claims processors to make a determination, increasing the risk of incorrect decisions. Because claims processors rely on the manual to properly adjudicate claims, it is essential that the guidance be clear and easily understandable to avoid incorrect benefit entitlement decisions on Gulf War claims. To prevent premature decisions, VBA should ensure that claims processors have the evidence needed to determine entitlement to benefits under the regulation before making decisions and that procedures clearly reinforce regulatory requirements. Adherence to requirements will help VBA ensure that the large population of potentially eligible veterans receive the benefits to which they are entitled.

Recommendations 1–5

The OIG made the following recommendations to the under secretary for benefits:¹⁰⁴

1. Update the instructions provided to examiners for completing Gulf War general medical examinations to add the definitional requirements for medically unexplained illness as outlined in 38 C.F.R. § 3.317 and clarify the instructions and related procedures to reflect that an examiner's determination that a disability pattern is an undiagnosed illness or a medically unexplained illness requires a written explanation.

¹⁰⁴ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

2. Implement a plan to update the Gulf War general medical examination disability benefits questionnaire to add the definitional requirements for medically unexplained illness as outlined in 38 C.F.R. § 3.317.
3. Implement a plan to incorporate into the Gulf War general medical disability benefits questionnaires the clinical requirements listed in 38 C.F.R. § 3.317 for an undiagnosed illness and a medically unexplained illness.
4. Implement a plan to incorporate into the appropriate medical disability benefits questionnaires the diagnostic criteria for functional gastrointestinal disorders from 38 C.F.R. § 3.317 and require examiners to provide an explanation of whether the disorder is functional or structural. This should include a requirement that any necessary testing has been completed before examiners diagnose specific functional gastrointestinal disorders.
5. Update VA's *Adjudication Procedures Manual* to clearly state that all the requirements of 38 C.F.R. § 3.317 must be met to award benefits. Clarify and reiterate instructions to claims processors that benefits should only be awarded after taking into consideration the overall evidence of record.

VA Management Comments

The under secretary for benefits concurred with all five recommendations. To address recommendation 1, VBA will add the definitional requirements for medically unexplained illness, as outlined in 38 C.F.R. § 3.317, to the instructions provided to examiners and related procedures. Regarding recommendations 2–4, VBA will implement plans, in accordance with 38 C.F.R. § 3.317, to incorporate the definitional requirements for medically unexplained illness, clinical requirements for an undiagnosed illness, and diagnostic criteria for functional gastrointestinal disorders into the appropriate medical disability benefits questionnaires. This will also include a requirement that any necessary testing be completed before examiners diagnose specific functional gastrointestinal disorders. Finally, regarding recommendation 5, VBA will update the *Adjudication Procedures Manual* to clearly state that all applicable requirements of 38 C.F.R. § 3.317 must be met to award benefits. VBA will clarify and reiterate instructions to claims processors that benefits should only be awarded after taking into consideration the overall evidence of record. The under secretary's comments are presented in full in appendix D.

OIG Response

The under secretary for benefits provided acceptable action plans for all recommendations. The OIG will monitor VBA's progress and follow up on the implementation of the recommendations until all proposed actions are completed.

Appendix A: Scope and Methodology

Scope

The OIG team conducted its work from July 2022 through June 2023. The OIG team focused on a universe of 16,788 Gulf War illness claims completed from October 1, 2021, through March 31, 2022, containing one of three indicators: the environmental hazards special issue flash, a Gulf War general medical examination, or the diagnostic code reflects the Gulf War modifier.¹⁰⁵

Methodology

To accomplish the objective, the OIG team assessed applicable laws, regulations, policies, procedures, and guidelines, related to Gulf War illness claims processing. The OIG team obtained information associated with Gulf War examinations and claims processing from VBA's Medical Disability Exam Office and Compensation Service. The team interviewed staff at the VA regional offices in Des Moines, Iowa, and Nashville, Tennessee. The team also interviewed staff with the Compensation Service and the Medical Disability Exam Office as well as the executives in charge of both. Additionally, the team interviewed medical examiners from companies under contract with VBA.

A random sample of 65 claims was reviewed for which entitlement to compensation for disability under 38 C.F.R. §3.317 was implicated. The sample size (65) was selected to result in a margin of error of 10 percent or less for the overall error rate projection. (See appendix B for more information.) These claims were reviewed using VBA's electronic systems, including the Veterans Benefits Management System. The team reviewed relevant documentation to determine whether VBA complied with statutory and procedural requirements for processing Gulf War Illness claims and for making benefit entitlement determinations. During this review the OIG team discussed the findings with VBA officials and took their feedback into consideration.

Internal Controls

The OIG team assessed VBA's internal controls significant to the objective. This included an assessment of the five internal control components to include control environment, risk assessment, control activities, information and communication, and monitoring.¹⁰⁶ In addition, the team reviewed the principles of internal controls as associated with the objective. The team

¹⁰⁵ A special issue flash is a claim-specific indicator that can represent a certain claim type, disability, or disease, or another special notation that is only relevant to a particular claim.

¹⁰⁶ Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

identified the following four components and five principles as significant to the objective.¹⁰⁷ The team identified internal control weaknesses during this review and proposed recommendations to address the following control deficiencies:

- Component: Risk Assessment
 - Principle 7: Identify, Analyze, and Respond to Risks
- Component: Control Activities
 - Principle 10: Design Control Activities
- Component: Information and Communication
 - Principle 13: Use Quality Information
- Component: Monitoring
 - Principle 16: Perform Monitoring Activities
 - Principle 17: Evaluate Issues and Remediate Deficiencies

Fraud Assessment

The OIG team assessed the risk that fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, significant in the context of the review objectives, could occur during this review. The team exercised due diligence in staying alert to any fraud indicators by

- identifying laws, regulations, and procedures related to the review subject matter to help detect noncompliance or misconduct;
- examining previous reviews, audits, and inspections as reported by VA OIG and other auditing organizations regarding VBA;
- completing the Fraud Indicators and Assessment Checklist; and
- requesting relevant OIG Hotline complaints for reports of fraud in the area under review.

The OIG did not identify any instances of fraud or potential fraud during this review.

Data Reliability

The OIG used computer-processed data from VBA's Corporate Database. To test for reliability, the team determined whether any data were missing from key fields, included any calculation

¹⁰⁷ Since the review was limited to the internal control components and underlying principles identified, it may not have disclosed all internal control deficiencies that may have existed at the time of this review.

errors, or were outside the time frame requested. The team also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. Furthermore, the team compared veterans' names, file numbers, dates of claims, and end product closed dates as provided in the 65 Veterans Benefits Management System records reviewed.

Testing of the data showed sufficient reliability for the review objective. Comparison of the data with information contained in the reviewed veterans' Veterans Benefits Management System records did not disclose any problems with data reliability.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Appendix B: Statistical Sampling Methodology

Approach

To accomplish the objective, the OIG team reviewed a statistical sample of Gulf War illness claims completed from October 1, 2021, through March 31, 2022. The team used statistical sampling to quantify the extent of premature decisions made by VBA claims processors on these claims. The projections shown in tables B.1 through B.4 reflect all claims decided during the review period.

Population

The review population included 16,788 Gulf War illness claims completed during the review period. For the purposes of the review, the team estimated the population to be 13,813 claims. The difference between the review population and the estimated population occurred because the team excluded 14 claims because they did not meet project scope requirements. Since the excluded samples are representative of others in the original review population that may also be out of scope, the team estimated the population out of scope is 2,975. Therefore, the population eligible for this review is 13,813 claims.

Sampling Design

The OIG team selected a simple random statistical sample of 65 claims from the population of completed Gulf War illness claims.

Weights

Samples were weighted to represent the population from which they were drawn, and the weights were used in the estimate calculations. For example, the team calculated the error rate estimates by first summing the sampling weights for all sample records that contained the given error, then dividing that value by the sum of the weights for all sample records.

Projections and Margins of Error

The projection is an estimate of the population value based on the sample. The associated margin of error and confidence interval show the precision of the estimate. If the OIG repeated this audit with multiple sets of samples, the confidence intervals would differ for each sample but would include the true population value 90 percent of the time.

The OIG statistician employed statistical analysis software to calculate estimates, margins of error, and confidence intervals that account for the complexity of the sample design.

The sample size was determined after reviewing the expected precision of the projections based on the sample size, potential error rate, and logistical concerns of the sample review. While precision improves with larger samples, the rate of improvement decreases significantly as more records are added to the sample review.

Figure B.1 shows the effect of progressively larger sample sizes on the margin of error.

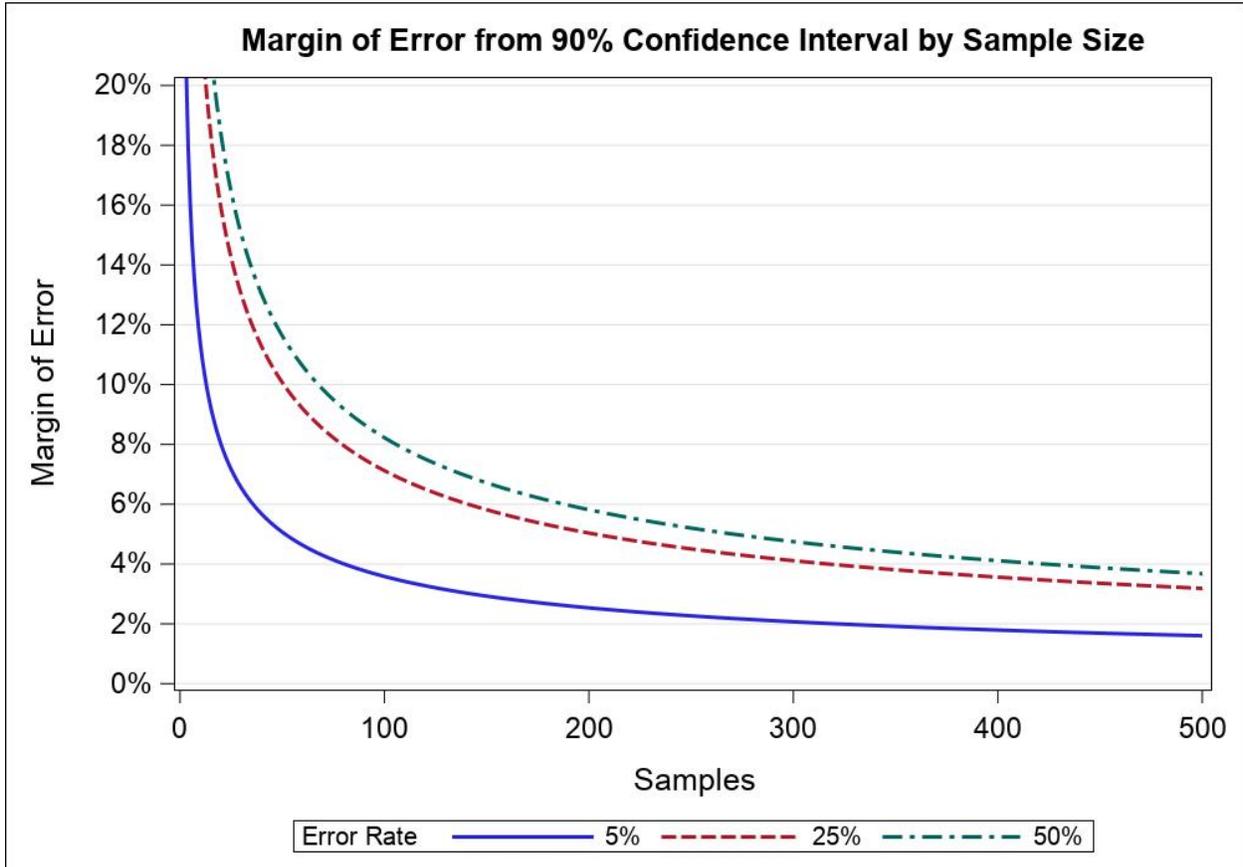


Figure B.1. Effect of sample size on margin of error.

Source: VA OIG statistician’s analysis

Projections

Tables B.1 through B.4 detail the OIG team’s analysis and projected results.

Table B.1. Summary of Projections and Confidence Intervals for Estimated Population on Gulf War Illness Claims

| Estimate name | Estimate number | 90 percent confidence interval | | | Sample size |
|---------------------|-----------------|--------------------------------|-------------|-------------|-------------|
| | | Margin of error | Lower limit | Upper limit | |
| Population in scope | 13,813 | 1,208 | 12,605 | 15,021 | 65 |

| Estimate name | Estimate number | 90 percent confidence interval | | | Sample size |
|-------------------------|-----------------|--------------------------------|-------------|-------------|-------------|
| | | Margin of error | Lower limit | Upper limit | |
| Population out of scope | 2,975 | 1,208 | 1,767 | 4,183 | 14 |

Source: VA OIG statistician’s projection of estimated population.

Note: Projections and confidence intervals may not total precisely due to rounding.

Table B.2. Summary of Projections and Confidence Intervals for Estimated Claims with Errors on Gulf War Illness Claims

| Estimate name | Estimate number | 90 percent confidence interval | | | Sample size |
|---|-----------------|--------------------------------|----------------|----------------|-------------|
| | | Margin of error | Lower limit | Upper limit | |
| Claims with errors | 3,188 (23%) | 1,241 (9%) | 1,947 (14%) | 4,429 (32%) | 15 |
| Claims with errors resulting in improper payments | 1,913 | 1,005 | 907 | 2,918 | 9 |
| Claims with errors resulting in a potential for improper payments | 1,275 | 838 | 437 | 2,113 | 6 |

Source: VA OIG statistician’s projection of estimated claims with errors.

Note: Projections and confidence intervals may not total precisely due to rounding.

Table B.3. Summary of Projections and Confidence Intervals for Estimated Improper Payments on Gulf War Illness Claims

| Estimate name | Estimate number | 90 percent confidence interval | | | | Sample size |
|-------------------|-----------------|--------------------------------|-------------|--------------|------------------------|-------------|
| | | Margin of error | Lower limit | Upper limit | One-tailed lower limit | |
| Improper payments | \$12,452,684 | \$9,440,044 | \$3,012,640 | \$21,892,728 | \$5,122,951 | 9 |

Source: VA OIG statistician’s projection of estimated improper payments. The confidence interval defined by the one-tailed lower limit gives a conservative estimate for the total value at the 90% confidence level.

Note: Projections and confidence intervals may not total precisely due to rounding.

Table B.4. Summary of Projections and Confidence Intervals for Estimated Claims with Increased Risk of Premature Entitlement Decisions on Gulf War Illness Claims

| Estimate name | Estimate number | 90 percent confidence interval | | | Sample size |
|----------------------------|-----------------|--------------------------------|----------------|----------------|-------------|
| | | Margin of error | Lower limit | Upper limit | |
| Claims with risk of errors | 5,525 (40%) | 1,487 (10%) | 4,038 (30%) | 7,012 (50%) | 26 |

Source: VA OIG statistician's projection of estimated claims with risk of errors.

Note: Projections and confidence intervals may not total precisely due to rounding.

Appendix C: Monetary Benefits in Accordance with Inspector General Act Amendments

| Recommendation | Explanation of Benefits | Better Use of Funds | Questioned Costs** |
|----------------|--|---------------------|-----------------------|
| 1-5 | The OIG estimated that premature decisions on Gulf War illness claims resulted in at least \$5.1 million in improper payments over the six months of the review period (October 2021 to March 2022). As a result, the OIG estimated at least \$25.6 million in improper payments could occur when including the review period and the additional time from the end of the review period through one year after the publication of the report recommendations, which is 2.5 years from the start of the review period.* | | \$25.6 million |
| | Total | | \$25.6 million |

* The OIG typically expects all recommendations to be fully implemented within one year.

The estimate includes payments that were either incorrect or unsupported. (The results could not be reported separately for incorrect payments and unsupported payments with precision due to the small sample size of each category, and so are presented in the aggregate.)

** The OIG questions costs when VA action or inaction (such as spending or failure to fully compensate eligible beneficiaries) is determined by the OIG to violate a provision of law, regulation, contract, grant, cooperative agreement, or other agreement; when costs are not supported by adequate documentation; or when they are expended for purposes that are unnecessary or unreasonable under governing authorities. Within questioned costs, the OIG must, as required by section 405 of the Inspector General Act, report unsupported costs. Unsupported costs are those determined by the OIG to lack adequate documentation at the time of the audit. The \$25.6 million in questioned costs were unsupported costs.

Appendix D: VA Management Comments

Department of Veterans Affairs Memorandum

Date: July 3, 2023

From: Under Secretary for Benefits (20)

Subj: OIG Draft Report -- Nonadherence to Requirements for Processing Gulf War Illness Claims Led to Premature Decisions [Project No. 2022-02194-AE-0095] — [VIEWS 10326348]

To: Assistant Inspector General for Audits and Evaluations (52)

Attached is VBA's response to the OIG Draft Report: Nonadherence to Requirements for Processing Gulf War Illness Claims Led to Premature Decisions.

The OIG removed point of contact information prior to publication.

/s/
Joshua Jacobs

Attachment

**Veterans Benefits Administration (VBA)
Comments on OIG Draft Report
Nonadherence to Requirements for Processing Gulf War Illness Claims Led to Premature
Decisions**

The Veterans Benefits Administration (VBA) concurs with the findings in OIG's draft report and provides the following comments in response to the recommendations:

Recommendation 1: Update the instructions provided to examiners for completing Gulf War general medical examinations to add the definitional requirements for medically unexplained illness as outlined in 38 C.F.R. § 3.317 and clarify the instructions and related procedures to reflect that an examiner's determination that a disability pattern is an undiagnosed illness or a medically unexplained illness requires a written explanation.

VBA Response: Concur. VBA will add the definitional requirements for medically unexplained illness, as outlined in 38 C.F.R. § 3.317, to the Supplemental Language Matrix (SLM). This will add the requirements to the Examination Scheduling Request (ESR) for examiners, until VBA can update the Examination Management System (EMS). VBA will add the definitional requirements and clarification of the instructions and related procedures in both the SLM and a Vendor Guidance Memorandum (VGM).

Target Completion Date: September 30, 2023

Recommendation 2: Implement a plan to update the Gulf War general medical examination disability benefits questionnaire to add the definitional requirements for medically unexplained illness as outlined in 38 C.F.R. § 3.317.

VBA Response: Concur. VBA will implement a plan to add the definitional requirements for medically unexplained illness as outlined in 38 C.F.R. § 3.317 to the Gulf War general medical examination disability benefits questionnaire (DBQ). The plan will consist of release of a VGM to examiners to provide them with the definitional requirements. Following release of the VGM, VBA plans to revise the Gulf War general medical examination DBQ to include the definitional requirements for medically unexplained illness. The DBQ update is currently scheduled for a March 2024 release. VBA expects to implement this plan, which will meet the intent of the recommendation, by September 30, 2023.

Target Completion Date: September 30, 2023

Recommendation 3: Implement a plan to incorporate the clinical requirements listed in 38 C.F.R. § 3.317 for an undiagnosed illness and a medically unexplained illness into the Gulf War general medical disability benefits questionnaires.

VBA Response: Concur. VBA will implement a plan to incorporate the clinical requirements listed in 38 C.F.R. § 3.317 for an undiagnosed illness and a medically unexplained illness in the Gulf War general medical DBQ. VBA will add the clinical requirements to the SLM, which will add the requirement to ESR for examiners to follow. Following updates to the SLM, VBA plans to revise the Gulf War general medical examination DBQ to incorporate the clinical requirements listed in 38 C.F.R. § 3.317 for an undiagnosed illness and a medically unexplained illness. The DBQ revision is currently scheduled for a March 2024 release. VBA expects to implement this plan, which will meet the intent of the recommendation, by September 30, 2023.

Target Completion Date: September 30, 2023

Recommendation 4: Implement a plan to incorporate into the appropriate medical disability benefits questionnaires the diagnostic criteria for functional gastrointestinal disorders from 38 C.F.R. § 3.317, and require an explanation of whether the disorder is functional or structural. This

should include a requirement that any necessary testing has been completed before examiners diagnose specific functional gastrointestinal disorders.

VBA Response: Concur. VBA will implement a plan to include the diagnostic criteria for functional gastrointestinal disorders from 38 C.F.R. § 3.317 and require an explanation of whether the disorder is functional or structural. This will also include a requirement that any necessary testing has been completed before examiners diagnose specific functional gastrointestinal disorders. VBA plans to add this guidance to the SLM for incorporation into the ESR for examiners to follow, until VBA can update the DBQ in EMS. VBA will also provide this guidance in a VGM to the examination vendors. VBA plans to revise the Gulf War general medical examination DBQ to incorporate the diagnostic criteria for functional gastrointestinal disorders from 38 C.F.R. § 3.317. The DBQ revision is currently scheduled for a March 2024 release. VBA expects to implement this plan, which will meet the intent of the recommendation, by September 30, 2023.

Target Completion Date: September 30, 2023

Recommendation 5: Update VA's Adjudication Procedures Manual to clearly state that all the requirements of 38 C.F.R. § 3.317 must be met to award benefits. Clarify and reiterate instructions to claims processors that benefits should only be awarded after taking into consideration the overall evidence of record.

VBA Response: Concur. VBA will update the Adjudication Procedures Manual to clearly state that all applicable requirements of 38 C.F.R. § 3.317 must be met to award benefits. VBA will clarify and reiterate instructions to claims processors that benefits should only be awarded after taking into consideration the overall evidence of record.

Target Completion Date: December 31, 2023

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

OIG Contact and Staff Acknowledgments

| | |
|----------------|---|
| Contact | For more information about this report, please contact the Office of Inspector General at (202) 461-4720. |
|----------------|---|

| | |
|-----------------|--|
| OIG Team | Lisa Van Haeren, Director Brandon Barnes Raymond Byrnes Kyle Flannery Tyler Hargreaves |
|-----------------|--|

| | |
|---------------------------|--|
| Other Contributors | Daniel Blodgett Debbie Davis Allison Tarmann |
|---------------------------|--|

Report Distribution

VA Distribution

Office of the Secretary
Veterans Benefits Administration
Veterans Health Administration
National Cemetery Administration
Assistant Secretaries
Office of General Counsel
Office of Acquisition, Logistics, and Construction
Board of Veterans' Appeals

Non-VA Distribution

House Committee on Veterans' Affairs
House Appropriations Subcommittee on Military Construction, Veterans Affairs,
and Related Agencies
House Committee on Oversight and Accountability
Senate Committee on Veterans' Affairs
Senate Appropriations Subcommittee on Military Construction, Veterans Affairs,
and Related Agencies
Senate Committee on Homeland Security and Governmental Affairs
National Veterans Service Organizations
Government Accountability Office
Office of Management and Budget

OIG reports are available at www.va.gov/oig.