LAW AND PROCEDURES

OBJECTIVE

Public Law 95-479, Section 305 (a) (3) - ". . . a description and analysis of procedures used with respect to former prisoners of war in determining eligibility for health care benefits and in adjudicating claims for disability compensation, including an analysis of the current use of statutory and regulatory provisions specifically relating to former prisoners of war;"

INTRODUCTION

This section traces the development of law and VA procedures which assist former POWs in obtaining health care and disability compensation. The material includes frequent references to items of veteran-wide (as opposed to POW-specific) applicability, to the extent that they facilitate former POWs' ability to establish claims. An analysis of the procedures and their application follows the opening discourse on historical development. The administrative VA issuances referred to throughout the text include:

Memoranda. Internal instructions of a permanent or temporary nature, initiated by officials at any level within the VA.

Information Bulletins, Program Guides. News, information aids and suggestions for the guidance of personnel within a specific technical or program area. Not directive or of a policy-making nature. Supplementary.

Service Letters. Directive in nature. Not in use after 1945.

Circulars. Directive material only, in the form of preliminary instructions which interpret laws, later issued in more permanent form such as VA Instructions or Regulations; or preliminary procedures to be issued in final form in Manuals.

Technical Bulletins. New instructions and information pertaining to technical matters and professional techniques; a temporary medium, later incorporated in Manuals for permanent effect.

Instructions. Issued upon the passage of a new law for the purpose of putting the provisions of the law into effect. A temporary medium. When refined and crystallized, the information appears in final form as a Regulation or as part of a Manual.

Regulations. Legally binding rules promulgated by the Administrator for the implementation of statutes, Executive Orders and legal precedents.

Manuals. Material of a permanent nature requiring separate treatment by subject, promulgating basic doctrine with respect to organization, procedures and techniques.

General Description of VA Compensation and Health Care Benefits

Briefly stated, disability compensation is payable under chapter 11 of title 38, United States Code, for physical and mental infirmity resulting from injuries or diseases either incurred or aggravated during military service. The monthly rates of payment vary with the level of disability, and disability levels are assigned on the basis of a rating schedule (Part 4 of title 38, Code of Federal Regulations) designed to reflect the average degree of earning impairment to be expected from various disorders. Financial need per se does not affect the rates of payment, although additional amounts are payable to certain married veterans, those with children and those with financially dependent parents. Special presumptions in law for former POWs make easier their establishing service-connection for certain disorders.

The survivors of those veterans whose deaths are service related, i.e., whose service-connected disabilities contributed to their deaths, and the survivors of certain other veterans whose service-connected disabilities rendered them totally disabled prior to death, are eligible for "dependency and indemnity compensation" payable under chapter 13 of title 38.

Eligibility and priority for health care benefits under chapter 17 of title 38 rests in large measure on a veteran's status as service-connected or nonservice-connected disabled. The primary mission of the health care system is the provision of medical care to the service-connected veteran. The VA is authorized to furnish on a priority basis such hospital care or outpatient treatment as a veteran requires for a service-connected disability. The nonservice-connected veteran under age 65 is eligible for care, and then on a space available basis, only if unable to defray its expense. While chapter 17 eligibility provisions single out the former prisoner of war in only one limited instance, i.e., expanded outpatient dental care eligibility, the special liberalizing presumptions under chapter 11 of title 38 which facilitate the former prisoner's task of establishing service-connection for certain conditions expand somewhat the individual's eligibility for VA health care benefits.

Public Law 91-584 of December 24, 1970 authorized educational assistance to wives and children, and home loan benefits to wives, of members of the armed forces listed as missing in action, captured by a hostile force, or interned by a foreign government or power. No retroactive entitlement was created and application must be made while the serviceman is listed in one of the qualifying categories. With the exception created by that Act, no special benefit programs exist for family members of prisoners of war.

Overview of POW-Specific Procedures

In the early years of World War II, VA procedures for determining compensation and health care eligibility did not address former prisoners of war as a distinct group. Provisions which applied to their special circumstances were usually inclusive of "combat" veterans in general, veterans who had experienced wartime conditions which often made substantiation of service incurrence of disabilities difficult due to such things as lack of opportunity to establish records of treatment at the time of injury, or loss of those records which were made. It is also noteworthy that Congress was aware that certain combat veterans may have declined treatment to avoid being separated from their units. This is similar to decisions reported by some former prisoners of war not to chronicle aches and pains after repatriation so as not to delay the homecoming process.

Congress also sought to assure that all veterans, but especially combat veterans, submitting compensation claims for service incurrence were to receive due consideration for the places, types, and circumstances of service. This policy was emphasized in legislation, Public Law 77-361, approved December 20, 1941. Due consideration was also to be given to the history of each organization in which a veteran served, his medical records, and all pertinent medical and lay evidence.

The difficulties experienced by military prisoners of war were not universally known until the end of World War II, as with civilians and others interned in concentration camps in Europe. This is reflected in the evolution of VA procedures specifically for prisoners of war. World War II POWs returned at a time when knowledge of the effects of internment was not as extensive as it became in later years.

NON-VA PAYMENTS TO FORMER POWS

In addition to Veterans Administration (VA) disability compensation for service-connected disabilities, former prisoners of war are eligible for certain other payments related to the POW

experience. Information on these benefits is presented here briefly as a point of reference for the reader and to indicate other forms of recognition of the hardships suffered by prisoners of war.

Foreign Claims Settlement Commission

Inadequate Food Rations - World War II

Originally called the War Claims Commission, the Foreign Claims Settlement Commission was established under the War Claims Act of 1948 (Public Law 80-896) to pay compensation out of seized enemy assets to military prisoners, civilian internees and others who had suffered at the hands of the Axis powers during World War II.[1] Section 6 (b) of the War Claims Act of 1948 authorized payment to former Pacific Theater and European Theater POWs of one dollar per day for every day they remained in confinement, deprived of adequate food rations in violation of the terms of the Geneva Convention.

Survey

In 1950, the Commission conducted a sample survey of the former POWs of World War II. The survey served to ascertain their physical status and to inform them of the one dollar per day benefit. The Commission received approximately 7,000 replies, most of which described in detail the disabilities these former POWs suffered during internment and which still plagued them after repatriation. One physician who was a POW replied to the survey, "No one who suffered the prolonged starvation, degradation, and physical suffering experienced by this group has been able to make a full recovery, either physical or emotional."[2] When informed of the one dollar per day payment, another former POW replied, "The money would be fine, but I'd trade it all just to feel really good for one whole day."[3]

Forced Labor and Inhumane Treatment - World War II

As a result of its survey, the Commission recommended that additional payments be made to former POWs on the basis of the forced labor and inhumane treatment they experienced through violations of the provisions of the Geneva Convention. The Congress added Section 6 (d) to the War Claims Act to provide payment of $1.50 per day for each day of this treatment. Widows, children, and parents of deceased POWs were also eligible for the Section 6 (b) and 6 (d) payments. Claims arising under these provisions had to be filed within two years from the passage of the War Claims Act legislation. Approximately 170,000 claims from living POWs or survivors of dead

POWs were paid. These claims included either Section 6 (b) payments of one dollar per day for inadequate rations or Section 6 (d) payments of $1.50 per day for inhumane treatment, or payments of $2.50 per day for both types of violations.

Korean Conflict

In 1954, the Congress authorized payments of $2.50 per day to Korean conflict POWs or their immediate survivors for each day of internment during which they experienced inadequate rations or inhumane treatment prohibited by the Geneva Convention. Also in 1954, the War Claims Act was amended to provide for payments of $2.50 per day to Americans serving in the Armed Forces of any Allied country during World War II for each day of internment during which they experienced inadequate rations or inhumane treatment.

Vietnam Era

Approved 1970, Public Law 91-289 provided for payments to former POWs of the Vietnam era. Compensation was payable at the rate of $5.00 per day -- $2.00 per day for each day of inadequate rations and $3.00 per day for each day of inhumane treatment. As with World War II former POWs, widows, children, and parents were eligible to file claims for such payments on behalf of deceased POWs. Public Law 91-289 applied to all POWs of the Vietnam era, including members of the U.S.S. Pueblo.

Military Disability Retirement

Service personnel, including former prisoners of war, may be medically retired or separated on the basis of disability incurred while in the military. The person usually has the option of selecting either military disability retired pay or VA disability compensation or a combination of the two (but cannot receive the full value of both; see title 38 U.S.C., 3104, 3105). There is presently no practical method of determining from manual and automated records the exact number of former POWs receiving part or all of their disability payment from the military rather than the VA. The VA data system does identify veterans and former POWs who were eligible for military disability payment but elected to receive VA disability compensation instead.[4]

Former prisoners of war from certain theaters of operation are more likely to have received military disability payments. For example, many of the Pacific Theater POWs captured on Bataan and Corregidor were regular Army personnel who had enlisted prior to America's entry into

World War II. A significant number probably remained in the military after the war and were retired later with disabilities incurred during or after the POW experience.

Most Vietnam era prisoners of war were career Air Force and Navy aviators who remained in the military after their repatriation. It is not known whether those who incurred disabilities will receive disability payments through the form of military retirement or as VA disability compensation.

Non-Federal Benefits

While it was not the purpose of this study to compile a comprehensive list of special benefits for former prisoners of war provided by some states and local jurisdications, examples of such benefits are waiver of fees for motor vehicle, hunting and fishing licenses, and exemption from state or local income taxes.

DEVELOPMENT OF LAW AND VA PROCEDURES - A CHRONOLOGY

Determinations as to which disabling conditions have resulted from injuries or diseases incurred or aggravated in service often require judgements which, depending upon the nature of the disability and quality of documentary evidence, can prove difficult to make. It has long been recognized that certain disabling diseases are typically so insidious in development that their point of onset cannot be documented. The burden of proving the relationship of these disabilities to military service often proved difficult for veterans to bear. The following chronology also includes references to laws and procedures which do not address prisoners of war specifically. These are included to show early recognition of special circumstances of service, which led to such things as special provisions for constitutional diseases and presumption of service relatedness for certain diseases or injuries in the absence of documentation for the period of service. POW-specific procedures became evident from 1945, reflecting the acknowledgement of the special circumstances of internment experienced by POWs of World War II.

1921

Enactments to mitigate the difficulty of proving service-relatedness date to August 9, 1921, with approval of Public Law 67-47. This measure amended section 300 of the War Risk Insurance Act of 1917 (39 Stat. 1199, March 4, 1917) to provide that World War I veterans with active pulmonary tuberculosis or neuropsychiatric disease developing to a degree of at least ten percent disability within two years after active service separation would be considered to have acquired or aggravated the disability in service.

The Veterans' Bureau promptly followed the public law with Regulation No. 11 (November 12, 1921), under which "constitutional" diseases other than active pulmonary tuberculosis or neuropsychiatric diseases were afforded a rebuttable presumption of service incurrence or aggravation if becoming manifest within one year of service separation. Promulgation of this regulation was followed one month later by issuance of a memorandum from the Medical Service cataloging the following as constitutional:

Acidosis
Anaemia Primary (all types)
Arterio-Sclerosis
BeriBeri
Diabetes Insipidus
Diabetes Mellitus
Gout
Haemochromatosis
Hemoglobinuria (paroxysmal)
Hemophilia
Hodgkins Disease
Leukemia (all types)
Obesity
Ochronosus
Pellagra
Polycythemia (Erythremia)
Purpura
Rickets
Scurvy
Endocrinopathies

1924-1933

The 1921 regulation and interpretive listing remained effective until 1933. Additionally, Section 200 of the World War Veterans' Act of 1924 permitted a presumption of service-connection for "neuropsychiatric disease, an active tuberculous disease, paralysis agitans, encephalitis lethargica, or amoebic dysentery" developing to a degree of ten percent disability prior to January 1, 1925, for World War I veterans.

Approval of the Act of March 20, 1933 (Public Law No. 73-2) and issuance of Veterans Regulation Number 1, part I, paragraph I (C) (March 31, 1933) authorized a presumption of service incurrence or aggravation for "a chronic disease" becoming manifest to a degree of ten percent within one year of separation from a period of 90 days of more active wartime service. Section 17 of the Act repealed all public laws granting compensation, and required the Administrator to review all claims of World War I veterans previously allowed to authorize continued payment only when the new requirements were met. Restoration to the rolls of those dropped as a result, at 75 percent of the rate otherwise payable was provided by the Act of March 28, 1934. (One hundred percent entitlement was restored by Public Law 81-339, October 10, 1949.)

Provision for outpatient dental care benefits stem from Veterans Regulations (V.R.) Number 7 (a), effective July 28, 1933, an Executive Order promulgated under Public Law No. 2, 73d Congress. V.R. 9 (a) authorized the Administrator "to furnish . . . such medical, surgical, and dental services as may be found to be reasonably necessary" for service-connected disabilities. Prior to World War II and the Korean conflict, the basic authority was liberally interpreted to provide for recurrent and progressive treatment of service-connected noncompensable dental conditions.

1941

In 1941, the House Committee on World War Veterans' Legislation reported its concern for difficulties which veterans can encounter in establishing service incurrence of disabilities, noting that combat veterans in particular often would have the least documentation of injury or disablement within the records of service:

> . . . It was emphasized in the hearings that the establishment of records of care of treatment of veterans in other than combat areas, and particularly in the States, was a comparatively simple matter as compared with the veteran who served in combat. Either the veteran attempted to carry on despite his disability to avoid having a record made lest he might be separated from his organization or, as in many cases, the records themselves were lost.
>
> The committee realized that the Administration has made pronouncements and set forth policies which are substantially the same as the procedures made mandatory by this bill; but believes that considerable difficulty has been encountered in securing uniform application of such policies and procedures.
>
> It is the intention of this committee that this legislation should make a matter of law the pronounced policies of the Veterans' Administration and make clear the obligation of employees engaged upon duties pertaining to determination of service-connection the necessity for the fullest consideration of all evidence and formulation of decisions in line with the policies to which this bill, if enacted, will give legislative sanction. Such policies will be for application in any cases reviewed as well as in new claims.[5]

Public Law 77-361, approved December 20, 1941, provided:

> . . . in each case where a veteran is seeking service-connection for any disability due consideration shall be given to the places, types, and circumstances of his service as shown by his service record, the official history of each organization in which he served, his medical records, and all pertinent medical and lay evidence.
>
> In the case of any veteran who engaged in combat with the enemy in active service with a military or naval organization of the United States during some war, campaign, or expedition, the Administrator of Veterans' Affairs is authorized and directed to accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by service in such war, campaign or expedition, satisfactory lay or other evidence of service incurrence or aggravation of such injury

> or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of such veteran: provided, that service-connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service-connection in each case shall be recorded in full.[6]

Regulations and Procedures, paragraph R-1031 (D), later emphasized for prisoner of war cases by Circular No. 277 (1946), provided for: "the establishment of service-connection by satisfactory lay or other evidence, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence, unless service-connection is rebutted by clear and convincing evidence. The benefit of every reasonable doubt is resolved in favor of the veteran."

Regulations and Procedures, paragraph R-1077 (B) provided that: "in determining service-connection due consideration shall be given to the places, types, and circumstances of service, the history of each organization in which the veteran served, his medical records, and all pertinent medical and lay evidence."

December 28, 1943

The Veterans Administration Service Letter of this date stressed expeditious adjudication of claims for disability compensation, then called "disability pension," based on combat and other clearly service-connected injuries. This letter stressed that when incomplete records were received from the service department (military) which showed that a veteran had a disability that was clearly service-connected and he was honorably discharged, that phase of the claim was to be immediately adjudicated.

> Particular care will be exercised in informing the veteran concerning the award action at this point that the action is based upon incomplete service records and any further adjudicative action warranted will be taken after complete service and medical records are received.
>
> After receipt of full service data reconsideration will be accorded the claim, including scheduling of a future physical examination under current procedure and appropriate action taken.[7]

1945

Promulgation of the 1945 Schedule for Rating Disabilities included issuance of the following instructions, which are especially germane in the adjudication of POW claims:

Resolution of Reasonable Doubt. It is the defined and consistently applied policy of the Veterans' Administration to administer the law under a broad interpretation, consistent, however with the facts shown in every case. When after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant.

By reasonable doubt is meant one which exists by reason of the fact that the evidence does not satisfactorily prove or disprove the claim, yet a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence; the claimant is required to submit evidence sufficient to justify a belief in a fair and impartial mind, that his claim is well grounded. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not a justifiable basis for denying the application of the reasonable doubt doctrine if the entire, complete, record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions and is consistent with the probable results of such known hardships.[8]

Complete Medical Examination of Injury Cases. The importance of complete medical examination of injury cases at the time of first medical examination by the Veterans Administration cannot be overemphasized. When possible, this should include complete neurological and psychiatric examination, and other special examinations indicated by the physical condition, in addition to the required general and orthopedic or surgical examination. 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. Incomplete examination is a common cause of incorrect diagnosis, especially in the neurological and psychiatric fields, and frequently leaves the Administration in doubt as to the presence or absence or disabling conditions at the time of the examination.[9]

Dysentery and Tropical Service. Great weight must be assigned to tropical service and to imprisonment or internment under unsanitary conditions, or food deprivation, in the service-connection of dysentery, tropical or bacillary, and other gastro-intestinal diseases with regard to which such service may have been the etiological or aggravating factor.[10]

Page 12 of the 1945 Rating Schedule provided for six month convalescent ratings of 100 percent or 50 percent, depending upon the conditions, for disabilities in the absence of, or in lieu of, ratings prescribed elsewhere in the schedule. The higher rating was to be given if the veteran required hospitalization or if the average person would be unable to pursue a substantially gainful occupation. The lower rating was given in less severe cases or if partial employment was feasible and advised.

March 9, 1946

In 1946, as a temporary measure in response to a tremendous increase in the number of claims of returning service personnel, service departments began furnishing the Veterans

Administration with original medical cards relating to examinations and treatment service personnel had received. This was a change from the earlier practice of forwarding photographic prints of medical cards to the VA, and was described in Circular No. 56, March 9, 1946. In most cases, the original medical material remained within veterans' VA records.

August 23, 1946

Veterans Administration Instruction No. 2 of this date, included the following:

> . . . particular attention should be given to pathology resulting from burns, frozen feet and other effects of exposure. Symptomatology consequent upon avitaminosis, malnutrition, metabolic changes, and other circumstances of prisoner of war experience requires special consideration.[11]

December 2, 1946

Section I of Circular No. 277 of this date provided direction for the equitable evaluation of claims of former prisoners of war. Because of its significance, especially in reference to examinations, history, evidence, and ill-defined disabilities, Section I is quoted in its entirety below.

> I. -- SERVICE CONNECTION AND EVALUATION OF DISABILITIES IN RELATION TO PRISONER OF WAR EXPERIENCE -- 1. Purpose. The circumstances surrounding the confinement of our military and naval personnel while prisoners of war require special attention in adjudication of claims based upon service of which such confinement was a substantial part. Accordingly, the purpose of this section is to facilitate the equitable adjudication of compensation claims based on disabilities traceable to prisoner of war experience.
>
> 2. Service Department Records. Where Service Department clinical records pertaining to the veteran's condition subsequent to repatriation are not in file, such records will be requested.
>
> 3. Examinations. Rating Action which will result in denying monetary benefits will not be accomplished in prisoner of war cases until complete examination by the VA has been obtained. Complete examination will be ordered "at once" following rating action resulting in the allowance of monetary benefits except in cases where such action is accomplished on the basis of Service Department clinical records as well as report of examination at discharge or on VA examination. Examinations and if necessary the first reexamination will also be ordered without the requirement of medical evidence in cases where the veteran expresses dissatisfaction with his rating. Priority of examination will be accorded these cases under R. & P. 6469 (A) 1. In this connection neuropsychiatric examination will be accomplished in each case in special reference to manifestations of metabolic origin, neurasthenoid character, or other syndrome consequent to malnutrition, avitaminosis, exposure, or other circumstances under which the veteran was held as a prisoner of war. Such additional special examinations as may be found indicated will be made. Examiners will be instructed to report definitely the existence or nonexistence of any general debility, flabby musculature, or the like complained of, and likely to be attributable to imprisonment, whether or not classified as a clincial entity.

4. Adjudication. a. Histories of injury sustained or disease suffered during confinement are usually but not invariably reported in the clinical records following termination of confinement and the return of the veteran to our forces. This evidence is of primary importance and denial of the claim will not be effected until such clincial records are obtained. The omission of reference, in these clinical records, to a disability for which service-connection is now claimed, is not determinative, particularly if there is submitted evidence by the veteran, or by his comrades in support of the incurrence of the disability during the period of confinement as a prisoner of war.

b. Special attention will be given to any disability, especially if ill-defined and not obviously of intercurrent origin, first reported after discharge. The circumstances attendant upon the individual veteran's confinement as a prisoner of war and the duration of such confinement will be associated with pertinent medical principles in determining whether a disability manifested subsequent to service is in etiology related to his prisoner of war experience. In this connection attention is invited to paragraph 2 on page 88 of the 1945 Schedule. The proximity of the manifestation of a disability to the date of discharge from service and the evidentiary showing of the circumstances of imprisonment or continuity of significant symptomatology will be given careful consideration under the provisions of R. & P. R-1031 (D).

December 4, 1946

Technical Bulletin TB 8-3 of this date directed priority of examinations in prisoner of war cases. Examiners were reminded of the special obligation to ascertain sources of complaints of reduced efficiency. The weakness and fatigability which often persist even after a former prisoner of war has regained weight were to be reported. Examiners were instructed that retinitis is not an uncommon residual of malnutrition. Tests for intestinal parasites were to be made routinely if the former POW suffered an intestinal disease or was inexplicably underweight. Any chronic disease which may have been associated with the circumstances of imprisonment were to be reported. These provisions were later specified in VA Regulations and Procedures R-1185 (C) (3).

December 22, 1946

The special procedures for handling prisoner of war cases, as described in Circular No. 277, were publicized by the Veterans' Administration through a release to all news media on December 22, 1946. This release informed all former prisoners of war that if they believed they were suffering from a disability resulting from their confinement, they should file a claim with the nearest Veterans' Administration office. Those who had had their claims denied were informed that they could have their claims reopened by applying to the nearest Veterans' Administration office.

1947

Since 1947 to the present, VA Form 21-2507 "Request for Examination" has included a block designated "POW" for checking by the Regional Office when requesting examination of a claimant by a VA medical facility. The block appeared in the section entitled "Purpose of Examination" (currently "Priority of Examination"). Research conducted during this study could not determine whether the POW indicator had appeared on Form 21-2507 prior to 1947.

May 19, 1948

In a report to the House Committee on Veterans' Affairs, the Administrator described the special considerations given in claims of former POWs. He referred to Regulations, Circular No. 277, the Rating Schedule and procedures that apply in claims of former POWs after making the following opening comments:

> Special consideration has been given by the Veterans' Administration to disability claims filed by veterans who were interned in enemy prison camps during World War II. Procedures for adjudicating these claims were adopted in December 1946, following a thorough study of the effects of malnutrition of former American prisoners of war. These studies showed that while most of the more than 125,000 servicemen who were repatriated from prisoner-of-war camps received special treatment and care after they were freed and apparently regained their health, some continued to suffer from the aftereffects of their confinement. The near-starvation diets to which American prisoners of war were subjected in certain enemy prison camps impaired their internal organs and caused nervous disorders.
>
> In many cases the effects of such malnutrition would escape detection in ordinary physical examinations because some symptoms are not as detectible as they are in such disorders as beriberi and pellagra. In other cases, the effects of malnutrition do not show up until long after the prisoners of war have been released from confinement.

June 23, 1948

Claims Information Bulletin IB 8-6 of this date emphasized the importance of special consideration for former POWs and made reference to existing procedural issuances relating to the adjudication of claims. Section I of Circular No. 277, 1946, was quoted in full, as were the aforementioned procedures regarding examinations in prisoner of war cases.

June 24, 1948

With the approval of Public Law 80-748 (62 Stat. 581, June 24, 1948), the statutory list of "chronic diseases" for which service-connection was to be presumptively granted was expanded to include the following:

> . . . anemia, primary; arteriosclerosis; arthritis, bronchiectasis; calculi of the kidney, bladder, or gallbladder, cardiovascular-renal disease, including hypertension, myocarditis, Buerger's disease and Raynaud's disease; cirrhosis of the liver; coccidiomycosis; endocarditis; diabetes mellitus; endocrinopathies; epilepsies; Hodgkin's disease; leukemia, nephritis; osteitis, deformans; osteomalacia; organic diseases of the nervous system, including tumors of the brain, cord, or peripheral nerves; encephalitis lethargica residuals; schleroderma; tuberculosis, active; tumors, malignant; ulcers, peptic (gastric or duodenal) and such other chronic diseases as the Administrator of Veterans' Affairs may add to this list . . .

The agency promptly added psychotic disorders to the list by regulation.

This post-World War II enactment also created for the first time a conclusive presumption of service-connection for certain tropical diseases suffered by wartime veterans. The following were to be presumed service-connected when shown to exist within one year of service separation: " . . . tropical diseases, such as cholera; dysentery; filariasis; leishmaniasis; leprosy; loiasis; malaria; black water fever; onchocerciasis; oroya fever; dracontiasis; pinta; plague; schistosomiasis; yaws; yellow fever and others and the resultant disorders or diseases originating because of therapy, administered in connection with such diseases, or as a preventative thereof . . . "

The same act provided a rebuttable presumption of service incurrence for these tropical diseases when suffered by veterans with peacetime service of at least six months' duration.

April 18, 1949

Technical Bulletin TB 8-113 of this date emphasized the part which lay affidavits can play in determinations of whether disabilities are service-connected, stressing that these are of particular importance in prisoner of war cases. Reference was made to the applicable regulations. In part, paragraph 2 of TB 8-113 stated:

> . . . While histories of injury sustained or disease suffered during confinement are usually reported in the clinical records following termination of confinement and the return of the veteran to our forces, the omission of reference, in these clinical records, to a disability for which service-connection is now claimed, is not determinative, particularly if there is submitted evidence by the veteran or by his comrades in support of the incurrence of the disability during the period of confinement as a prisoner of war.

1950-1969

December 26, 1950

Claims Information Bulletin IB 8-51 of this date presented instruction as to cases involving issues of service-connection for chronic diseases first manifested after the presumptive period. Paragraph 1 included the following sentence:

. . . Veterans whose claims are denied by reason of manifestation after this period should be fully informed that any medical or lay evidence which they may be able to secure of any illness or disturbance of function of any part of organ during service or within the presumptive period may be considered in determining the propriety of service-connection.

April 12, 1951

Paragraph 11 of Claims Information Bulletin IB 8-55 of this date discussed the importance of lay evidence.

. . . Question has been raised concerning the acceptance of lay evidence, particularly with regard to this evidence constituting claim for increase. Evidence testifying to facts within the competence of the lay person and showing increase in severity of the veteran's disability when confirmed by VA examination constitutes claim for increase, and the date of the receipt of this evidence by the VA establishes the date of claim. There should be no failure to accept competent lay evidence.

Paragraph 14 of Information Bulletin IB 8-55 emphasized that cirrhosis is associated with nutritional deficiency, and that presumption of misconduct is unwarranted:

. . . It is always to be borne in mind that no presumption of misconduct origin attaches to cirrhosis, and that the fact must be established by the evidence. This disease of the liver is a deficiency disease, and to attribute it to excessive use of alcoholic beverages requires a long history of excessive indulgence, other than occasional admissions by the veteran himself, and other evidences of inadequate nutrition, such as neuritis, loss of weight, etc.

Congressional enactments extended to three years the presumptive period of service-connection for active pulmonary TB (Pub. L. No. 81-573, June 23, 1950) and "all other types of active tuberculosis" (Pub. L. No. 83-241, August 8, 1953), and, for entitlement to treatment only, the presumptive period for active psychoses was set at two years for World War II and Korean conflict veterans. (Pub. L. No. 82-239, October 30, 1951).

January 25, 1954

Paragraph 2 of Technical Bulletin TB 8-254 of this date specified that, "Whenever the evidence indicates that the veteran was a prisoner of war, the legend 'POW' will be used in the "Remarks" block . . . " of the Dental Rating Sheets.

June 16, 1955

As previously noted, prior to World War II and the Korean conflict, the basic authority for dental services was liberally interpreted to provide for recurrent and progressive treatment of service-connected noncompensable dental conditions. With those wars, the volume of applications

for dental treatment exceeded the agency's capability to provide the benefits. Analysis indicated that repeat care of service-connected noncompensable dental disabilities was a major factor in the size and cost of the program. In 1954 and 1955 appropriation acts, Congress responded to that situation and imposed limitations on the availability of appropriations, which effectively imposed a requirement that applications for the treatment of noncompensable dental conditions be submitted within certain time limits after a person's discharge. VA administrative directives issued during that period provided for one-time satisfactory completion of dental treatment for noncompensable service-connected conditions but established exceptions permitting recurring treatment for the following categories: (1) veterans with disabilities resulting from combat injury or service trauma, and (2) beneficiaries with prisoner-of-war status.

In part, Public Law 83, 84th Congress, approved June 16, 1955, enacted the appropriation act limitations on dental treatment into permanent law. Public Law 83 also incorporated the VA-initiated exceptions to those limitations, essentially unchanged in title 38 U.S.C., paragraph 612 (b). (Dental services for former POWs were later expanded through P.L. 96-22 of June 13, 1979, discussed below.)

The one year presumptive period for multiple sclerosis was increased first to two years (Public Law 82-175, October 12, 1951), then to three years (P.L. 86-187, August 25, 1959), and finally to the current seven years (P.L. 87-645, September 7, 1962). A three year presumptive period for Hansen's disease was provided by Public Law 86-188 (August 25, 1959).

March 3, 1966

Originally limited to cases involving veterans with wartime service, presumptions in law of service-connection for chronic diseases were extended to cases involving active peacetime service after January 31, 1955 by Public Law 89-358 of this date.

May 27, 1966

Paragraph 2 of Program Guide 21-1, Change 61, Section N-11, presented definitions of importance to claims of those captured during periods of peacetime.

> . . . The term "combat" includes conflict with hostile forces during wartime or peacetime service. The term "prisoner of war" may be applied to any person who while on active service is captured by hostile forces, regardless of whether a war has been declared. Capture by guerrilla forces is included.

PG 21-1 emphasized existing provisions for those captured by hostile forces during periods of formally undeclared wars, such as the Korean and Vietnam conflicts.

August 12, 1970

Section 3 of the Act of August 12, 1970, Public Law 91-376, offered the first special provisions in statute for POW compensation determinations:

> Sec. 3. (a) Section 312 of title 38, United States Code, is amended by . . . adding the following new subsections:
>
> (b) For the purposes of subsection (c) of this section, any veteran who, while serving in the active military, naval, or air service, was held as a prisoner of war for not less than six months by the Imperial Japanese Government or the German Government during World War II, by the Government of North Korea during the Korean conflict, or by the Government of North Korea, the Government of North Vietnam or the Viet Cong forces during the Vietnam era, or by their respective agents, shall be deemed to have suffered from dietary deficiencies, forced labor, or inhumane treatment in violation of the terms of the Geneva Conventions of July 27, 1929, and August 12, 1949.
>
> (c) For the purposes of section 310 of this title and subject to the provisions of section 313 of this title, in the case of any veteran who, while serving in the active military, naval, or air service and while held as a prisoner of war by an enemy government, or its agents during World War II, the Korean conflict, or the Vietnam era, suffered from dietary deficiencies, forced labor, or inhumane treatment (in violation of the terms of the Geneva Conventions of July 27, 1929 and August 12, 1949), the disease of --
>
> (1) Avitaminosis,
> Beriberi (including beriberi heart disease),
> Chronic dysentary,
> Helminthiasis,
> Malnutrition (including optic atrophy associated with malnutrition), Pellagra, or
> Any other nutritional deficiency, which became manifest to a degree of 10 percentum or more after such service; or
>
> (2) Psychosis which became manifest to a degree of 10 percentum or more within two years from the date of separation from such service;
>
> shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of such disease during the period of service.

The recorded legislative history of these provisions gives no indication as to why or how the six month minimum internment requirement was decided upon.

The provisions of Public Law 91-376 were discussed in DVB Circular 20-70-73, Appendix C, of January 7, 1971.

December 24, 1970

Public Law 91-584 of this date authorized educational assistance to wives and children, and home loan benefits to wives, of members of the Armed Forces missing in action, captured by a hostile force, or interned by a foreign government or power during the Vietnam era. VA Circulars, among them 20-71-19 and 20-73-11, used in conjunction with title 38 of the U.S. Code implemented the provisions of the law.

October 1971

Beginning with the printing of October 1971, VA Form 21-526, "Veteran's Application for Compensation or Pension" included items 10E through 10G for indicating whether the veteran had ever been a prisoner of war and, if so, the name of the country and dates of confinement.

October 19, 1972

In a letter to heads of departments, staff offices and field stations, the Administrator stressed a special obligation to veterans who are prisoners of war or missing in action, and to their families:

> The purpose of this letter is to emphasize that we must match the sacrifices of these Americans with the unequivocal commitment on our part that the resources of the Veterans Administration will be made available in a timely, responsive, and compassionate manner. This must be done without any incident of administrative delays, impersonal treatment, restrictive interpretation of benefits, or fragmented, incomplete delivery of services.

February 22, 1973

Circular 10-73-33 of this date focused on "Medical Care for Servicemen Who Were Prisoners of War or Missing in Action During the Vietnam Era." It emphasized the appropriate provisions of title 38, U.S. Code, to provide aid and assistance regarding VA benefits and services, as well as information on other Government programs such as medical care under the CHAMPUS program administered by the Department of Defense. Each former POW and returned MIA was to be accorded individualized attention, with key members of the VA medical facilities having monitoring and coordinating responsibilities. Personalized processing of paperwork was called for in this circular. Short term counseling or supportive psychiatric treatment, when urgently needed, were to be furnished to families as part of the care provided the serviceman. Medical records of these servicemen were to be clearly labeled, "Expedite. POW-MIA CASE."

May 3, 1973

Circular 20-72-94 of this date established procedures by which the Veterans Administration would respond to the compensation, education and other needs of those persons who were "Prisoners of war in Southeast Asia and elsewhere, listed as missing in action but are repatriated as prisoners of war, forcibly detained or interned by a foreign government or power as civilians but have veteran status, and dependents of service personnel listed as missing in action."

The circular stressed that personalized assistance should be extended to the returning servicemen and dependents and stressed the need for sensitivity and thoroughness in handling claims, benefits counseling, monitoring claims processing, and providing information on other government benefits. All returnee and survivor claims were given "top priority" for expeditious processing. Applications and claim folders were to be identified with a "POW/MIA" label. The circular contained instructions for administrative, adjudicative, counseling, loan guaranty and insurance elements of the Department of Veterans Benefits. Special provisions were included for cooperative efforts with the military in providing information to the repatriated POWs.

May 31, 1974

Originally limited to cases involving veterans wtih wartime service, presumptions in law of service-connection for chronic diseases were first extended to cases involving active peacetime service after January 31, 1955 by Public Law 89-358 (March 3, 1974). The list of chronic diseases as currently constituted (38 C.F.R. 3.309) is as follows:

Anemia, primary
Arteriosclerosis
Arthritis
Atrophy, Progressive muscular
Brain hemorrhage
Brain thrombosis
Bronchiectasis
Calculi of the Kidney, bladder, or gallbladder
Cardiovascular-renal disease, including hypertension
Cirrhosis of the liver
Coccidioidomycosis
Diabetes mellitus
Encephalitis lethargica residuals
Endocarditis (This term covers all forms of valvular heart disease.)
Endocrinopathies
Epilepsies
Hansen's disease
Hodgkin's disease
Leukemia
Myasthenia gravis
Myelitis

Myocarditis
Nephritis
Other organic diseases of the nervous system
Osteitis deformans (Paget's disease)
Osteomalacia
Palsy, bulbar
Paralysis agitans
Psychoses
Purpura idiopathic, hemorrhagic
Raynaud's disease
Sarcoidosis
Scleroderma
Sclerosis, amyotrophic lateral
Sclerosis, multiple
Syringomyelia
Thromboangitis obliterans (Buerger's disease)
Tuberculosis, active
Tumors, malignant, or of the brain or spinal cord or peripheral nerves
Ulcers, peptic (gastric or duodenal) (A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology; in short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data.)

Program Guides October 12, 1972 through August 27, 1976

The claims of former prisoners of war were the subject of several Program Guides issued during the period of October 1972 to August 1976.[12] The major elements of the Program Guides are summarized below:

o There is a frequent paucity of records in POW claims; where a disability is first diagnosed after service, special attention should be given to POW experiences in determining the relationship of the disability to service.

o The duration and circumstances of imprisonment will be associated with pertinent medical principles in these determinations.

o While liberal application is given, there must be a reasonable basis for establishing service-connection in these cases.

o If it is alleged that debriefing records contain relevant information, request for records will be sent to the service department, but only where favorable adjudicative action is expected.

o Few medical records will be available regarding treatment during imprisonment.

o The burden of proof as to occurrence of the POW episode in such claims has been shifted from the claimant to the government.

o When residual disability is found, it should be accepted without question that POWs were subject to tropical diseases (Pacific Theater and Southeast Asia), hardship and malnutrition.

o The veteran's statement as to wounds and injury just prior to imprisonment will be accepted as proof of actual incurrence when residual disability attributable to service is found.

o Presumptions are rebuttable under VA Regulation 1307 (D) when there is affirmative evidence to the contrary.

o The unusual hardship and isolation from society resulting from POW life means that an extended period of readjustment to ordinary conditions of life is essential.

o In claims for individual unemployability when the threshold disability percentage for this benefit is not met, the issue should be submitted to VA Central Office.

June 13, 1979

As previously described, limitations on dental treatment for veterans were established in 1955. Exceptions were permitted for treatment for two categories: (1) veterans with disabilities resulting from combat injury or service trauma, and (2) beneficiaries with prisoner of war status. Under section 612 (b) (3) of title 38, U.S. Code, a former POW could receive outpatient dental care without limitation for any service-connected dental condition attributable to internment. For other veterans, such unlimited outpatient dental care was otherwise only available for noncompensable service-connected conditions if they resulted from combat wounds or other service trauma. These circumstances provided exception for former POWs to the requirement which would otherwise apply that the service-connected dental condition be compensable in degree or that, if noncompensable, application for treatment be made within one year after discharge or release from active service.

Public Law 96-22, June 13, 1979, included provisions which expanded the extent of dental care benefits for former prisoners of war. Effective October 1, 1979, P.L. 96-22 provides that veterans who have a service-connected disability evaluation of 100 percent or who were prisoners of war during World War I, World War II, the Korean conflict or the Vietnam era for not less than six months, are eligible for any needed dental care from the Veterans Administration.

September 21, 1979

Department of Veterans Benefits (DVB) Circular 21-79-12 of this date provided direction for the implementation of the new dental care benefits for former POWs enacted by P.L. 96-22. Department of Medicine and Surgery Interim Issue 10-79-42 of the same date advised field facilities of the provisions of the new law and provided instructions for implementation.

November 13, 1979

Department of Medicine and Surgery Circular 10-79-272 of this date provided information to field facilities on the development of a microfiche listing of former POWs developed during the course of this study. The listing, which has names and other information on former POWs of World War II, Korea and the Vietnam era, is to be used to verify POW status in connection with dental care benefits authorized by P.L. 96-22.

January 15, 1980

Department of Medicine and Surgery Circular 10-80-7 of this date called for the use of a pressure-sensitive "POW" label to be affixed to the medical and related administrative records of VA patients identified as former prisoners of war. The 2 1/2" by 5/8" label has the letters "POW" printed in green on a white background with a matching green border. The circular also discussed forthcoming distribution of a one-time, computer-generated listing of former POWs containing the names of former POWs who appear in the computerized Patient Treatment File.

January 18, 1980

Department of Medicine and Surgery Circular 10-80-11 of this date discussed use of the application for Medical Benefits, VA Form 10-10 revised in January 1979, to indicate not only POW status, as before, but also the theater of war in which the former POW was interned. The circular directed that medical staff members who have limited experience in examining and treating patients who endured severe and prolonged stress and physical deprivation are expected to make full use of the expertise of other staff members or consultants in these matters. The circular described establishment of a former POW registry at the Armed Forces Institute of Pathology (AFIP), and directs that all pathological material (surgical, cytologic, and autopsy) from former POWs is to be examined and reported at each VA medical center and a duplicate set of slides, blocks, etc., forwarded to the AFIP.

March 1980

In an effort to address the issue of internment or combat related anxiety and stress, the VA Departments of Veterans Benefits and Medicine and Surgery are preparing guidelines on how to diagnose, treat, and rate anxiety neurosis appearing among former POWs and other combat veterans, especially those returned from Vietnam. These guidelines presently do not include a specific reference to former POWs, although they generally refer to stresses induced by combat or "internment under inhumane conditions." These guidelines use the term "post-traumatic stress neurosis" (a term due to become part of the VA's official diagnostic classification system October 1, 1980) to describe such anxiety neurosis. The draft DM&S guideline describes "post-traumatic stress neurosis" in terms of many of the same symptoms used to characterize the "K-Z syndrome" - e.g., startle reaction, insomnia, survivor guilt, memory lapses. The draft DVB guidelines point out that when such symptoms are found to be present upon examination, they are to be diagnosed and accepted for rating purposes as "post-traumatic stress neurosis" and coded as "anxiety neurosis," using the VA rating schedule. The draft DVB guidelines also note that when "post-traumatic stress neurosis" or a similar disorder is recorded in combat veteran military medical records, the disability should be service-connected even though it does not become clinically apparent until long after military service.

ANALYSIS OF PROCEDURES AND THEIR APPLICATION

General

Over the years, the Veterans Administration has changed its approach to the adjudication of claims of former prisoners of war, gradually developing flexibility in such areas as substantiation of claims in the absence of medical records for periods of internment and presumption of service incurrence for certain disabilities. This approach reflects the evolution of law and implemental VA procedures. The degree of flexibility has roughly coincided with advancements in medical knowledge concerning the serious health impairments which can result from imprisonment.

The largest group of repatriated prisoners of war is the group from World War II. As the effects of captivity became more widely known, later groups of POWs received more complete repatriation examinations, but the World War II POWs returned at a time when knowledge of the effects of internment was not as extensive as it became in later years. Thus, the least was known when the most returned. The review of claims files conducted in connection with this study demonstrated that former prisoners of war generally have received special consideration in keeping with statutory and procedural provisions in terms of medical evaluation and disability compensation.

Application of Procedures

Although former prisoners of war are often among those veterans who have the least documentation of injury or illness during military service, and many did not receive repatriation examinations, they are a group which has received service-connected disability ratings to a greater degree than war veterans in general. Based on comparisons of veterans and former prisoners of war on VA compensation rolls, less than 10 percent of war veterans receive compensation, compared with 43.6 percent for former prisoners of war. Fifty-nine percent of former POWs from Korea receive service-connected compensation, while the figure is 50.6 percent for Pacific Theater POWs and 42.2 percent for European Theater POWs.

Of those POWs who did receive repatriation examinations, over half had inadequate medical histories for the period prior to capture, according to the physicians who reviewed a sample of claims folders. Thus there were often few benchmarks for later assessment of possible POW-related disabilities. Other statistics which reflect the application of procedures in the rating of service-connected disabilities also show differences among theaters of operation. Veterans with severe disability (ratings of 50 percent or more disabled) constitute 22.2 percent of all veterans with service-connected disability ratings. Former POWs with severe disability ratings constitute 26.4 percent of former POWs with service-connected disability ratings. Of compensable former World War II POWs of the European Theater, 20.1 percent have severe disability, while the percentage is 48.8 of former World War II POWs of the Pacific Theater and 34.7 of former POWs of the Korean conflict. The average degree of service-connected disability is 28.5 percent for all compensable veterans and 29.7 percent for all compensable prisoners of war. The average disability rating for compensable European POWs is 27 percent, for Pacific POWs 40.3 percent and for Korean POWs 36.1 percent.

The review of randomly selected claims folders, conducted by representatives of the Board of Veterans Appeals and the Department of Veterans Benefits, revealed that between 75 and 80 percent of the folders of POWs from each theater -- the Pacific and European Theaters of World War II and Korea -- contained one or more claims for service-connected disability compensation. For the European Theater, about 70 percent of those who filed compensation claims were rated as having service-connected disabilities. Approximately 85 percent of the former POWs of the Pacific Theater and about 90 percent of former POWs of Korea who filed claims were rated as having service-connected disabilities. The review also showed that a fairly small number, less than 10 percent, of the former prisoners of war who filed compensation claims exercised their right of appeal through the Board of Veterans Appeals.

Time constraints of the study did not permit an in-depth analysis of the history of each of the many service-connected disabilities claimed, diagnosed, established or denied beyond determining that former POWs have generally received special consideration in keeping with statutory and procedual provisions. An indication of the quality of regional office claims adjudication was also provided by an analysis of those sample folders which had gone through the appeals process with the Board of Veterans Appeals. Of the appeals reviewed by the Board, the great majority were denied, upholding the decisions of regional offices, and approximately 15 percent of the appeals were allowed. This ratio of allowances/denials is consistent with the ratio for all veterans whose claims are reviewed by the Board of Veterans Appeals. Similarly, an analysis of data for all appeals of former POWs reviewed by the Board in 1978 showed that the great majority of appeals were denied, thus upholding decisions made by regional offices. About 12 percent of the appeals of former POWs were allowed in 1978, which is within the normal allowance rate for all veterans whose claims are reviewed by the Board of Appeals.

When asked whether evidence from sources other than VA and repatriation examinations -- including buddy statements, lay statements and private physician or hospital reports -- had been considered by the VA in reaching its decisions on compensation claims, the reviewers of the sample of claims folders responded overwhelmingly in the affirmative.

Anxiety Neurosis and Unemployability

The later assessment of POW-related mental status or psychiatric conditions was made more difficult since not all former POWs received repatriation examinations. Also, physicians who reviewed a sample of claims folders noted that psychiatric and mental status was not thoroughly evaluated in about one third of the repatriation examinations. However, of the 35 most common diagnostic conditions for which former prisoners of war have been rated, the single most prevalent condition is anxiety neurosis which accounts for 12.7 percent of all service-connected conditions of former POWs. This is three times the rate for all veterans receiving compensation. While former POWs make up only 1.4 percent of the veterans on the compensation rolls and their total diagnostic conditions form only 1.7 percent of all service-connected diagnoses, the diagnosis of service-connected anxiety neurosis for former POWs constitutes 5 percent of all service-connected anxiety neurosis conditions for all veterans on the compensation rolls.

Total disability ratings based upon unemployability are assigned those veterans unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities even though the disabilities are deserving of less than total ratings under the rating schedule. Unemployability ratings are assigned after many factors are taken into consideration. Level of education, prior job experience and skills, physical and mental limitations and aptitude are

considered. Veterans with unemployable status constitute 5.3 percent of all veterans on the compensation rolls. Former prisoners of war with unemployable status constitute 8.7 percent of all former POWs on the compensation rolls. Of compensable former World War II Pacific POWs, 22 percent have unemployable status. Of former World War II POWs of the European Theater, 5.3 percent have unemployable status, while the figure is 8.9 percent for Korean conflict POWs on the compensation rolls.

Medical Examinations

As the history of development of VA procedures demonstrates, there were correspondingly fewer reminders to VA medical examiners than to adjudicators concerning special circumstances of POW claimants. Generally, a compensation examination is limited to a specific condition claimed by the veteran to be service-connected. If it is not clear to the examiner that the patient is a former prisoner of war or if the examiner is unfamiliar with or unaware of the possible significance of general debility or "reduced efficiency" in connection with former POWs, there is a likelihood that the examination will be limited.

The review of a sample of claims folders by physicians in connection with this study showed that almost 90 percent of VA examinations for specifically claimed medical conditions in question were thorough. When asked if the information from VA examinations permitted a reasonable judgement of whether the medical conditions found may be attributable wholly or in part to the POW experience, physician-reviewers noted that the information was adequate or very good for such judgement in approximately three-fourths of cases reviewed.

Service medical records appeared as evidence of record in approximately three-fourths of the sample of claims folders reviewed. About one quarter of all former POWs who had filed claims had non-VA/non-military hospital reports as evidence of record. A similar number had private physician reports. The physicians who reviewed the folders believed that other pertinent medical information in the claims folders -- such as VA outpatient and hospital reports, private physician statements, and medical histories -- led to a better understanding of the former POW's health status and existing medical condition in the majority of folders in which such information was found.

Circular No. 277 of December 2, 1946, Technical Bulletin 8-3 of December 4, 1946, and special provisions later appearing as VA Regulations and Procedures R-1185 (C) (3) specified priority of examinations in prisoner of war cases and emphasized the importance of ascertaining causes of reduced efficiency, general debility and ill-defined disabilities. However, one factor which naturally comes into play in determinations of service-connection of disabilities is how soon

after service separation the condition becomes manifest. Serious limitations in knowledge as to the delayed effects of such stresses and deprivations as experienced by prisoners of war is a major obstacle for decisionmakers.

OTHER ITEMS

The Six Month Period

Section 3 of the Act of August 12, 1970, Public Law 91-376, offered the first special provisions in statute for compensation determinations of former POWs. A key phrase in this legislation -- section 3.(b) -- is that which specifies that it applies to a veteran who, meeting other conditions of the law, " . . . was held as a prisoner of war for not less than six months . . . "

Nowhere in the recorded legislative history of the provision for presumption of service-connection for certain POW-related conditions, Section 3 (b) of P.L. 91-376, is there discussion as to how it was decided that a minimum 180 days internment would be required before a former POW would be presumed to have undergone dietary deficiency, forced labor or inhumane treatment. Any former POW who suffered from one of these three deprivations is entitled to a presumption of service-connection for certain diseases specified in 38 U.S.C., 312(c).

Besides presumption concerning service-connection for certain diseases created by P.L. 91-376, the only other statutory VA benefit provision especially designed for former POWs is the authorization for all necessary dental care created by P.L. 96-22. A minimum six-month internment period is also required for eligibility under this provision. The legislative record culminating in the enactment of P.L. 96-22 does reflect congressional consideration of the significance of imposing, as a condition of the eligibility for the new benefit, a minimum period of POW internment. In granting only certain former POWs comprehensive dental care, congressional reports expressly note that nutritional deficiencies among POWs which led to gum disease and long-term effects on oral and dental health resulted from a prolonged state of deprivation. In setting a time limit to reflect that finding, Congress accepted the six-month period in section 312 as an appropriate period to apply to eligibility for the new benefit.

"Buddy Statements"

Some lay evidence which is used in the consideration of all procurable and assembled data in support of a veteran's claim is popularly referred to as the "buddy statement." The comments of other former POWs who were interned with the claimant are useful to corroborate the incurrence

or aggravation of an injury or disease. Reviewers of the sample of claims folders of former POWs noted that buddy statements, when submitted, were considered in reaching decisions on claims and in some cases formed the basis for granting service-connection. Less than 10 percent of the sample who had filed claims for disability compensation had submitted buddy statements. Buddy statements which merely state that a former POW was in the same location at the same time as the claimant and do not specify that the comrade witnessed a disease or trauma incurred by the claimant have less value as supportive evidence.

While it can prove very useful to have corroborative evidence of any kind, and while it is acknowledged that decisons are made on the basis of all assembled data, former prisoners of war can encounter difficulty in locating former comrades to assist them long after service separation. With the possible exception of organizations of former prisoners of war which maintain membership lists -- members comprise a relatively small proportion of all surviving former POWs -- there is no reliable locating method. In discussions former POWs had with VA personnel during the study, they often spoke of not having contact with comrades or knowing of their whereabouts. Chance encounters reunite comrades, but generally former POWs and many other veterans do not maintain contact with former comrades for any length of time after separation from service.

Records - Other Information

The lack of documentary evidence of service incurrence or aggravation of disabilities can be a problem for former prisoners of war. The most helpful information is obtained from military records, particularly records of medical treatment.

Shortly after midnight on July 12, 1973, a fire was discovered at the Military Personnel Records Center, Overland, Missouri. The fire burned for five days and did severe damage to many records of former service personnel. Approximatley 17.5 million folders of Army personnel discharged between November 1, 1912 and December 31, 1959 were destroyed. About one million records of Air Force personnel whose surnames begin with letters "I" through "Z" who were discharged between September 25, 1947 and December 31, 1963; and about 2,000 records of Army personnel discharged between January 1, 1973 and the time of the fire were destroyed. It is not known how many of these records were for former prisoners of war. However, the majority of former prisoners of war who have filed claims with the VA did so prior to the time of the fire. In those cases, any service medical records extant would routinely have been retrieved and placed within claims files.

In 1946, as a temporary measure, service departments began furnishing the Veterans Administration with original medical cards relating to treatment individuals received during their

military service. Prior to that time, photostatic copies had been furnished to the VA. As noted in Circular No. 56, when the War Department requested return of the cards, the original medical cards were to be returned for copying by the War Department and the VA was not required to make photostatic copies for its own files. It can only be speculated, but this exchange of cards could also have resulted in occasional loss of pertinent information.

Uniformity Among Regional Offices

Some former prisoners of war and other veterans maintain that certain VA Regional Offices (ROs) are more difficult than others to convince of service-connection in compensation claims. While a separate study of this issue was not possible within the time limitations of this study, a similar inquiry was previously conducted by the General Accounting Office (GAO) in 1974-1975. The GAO sent a selected sample of veterans' claims folders to three other ROs after the cases had been rated in one regional office. The GAO found occasional variances in disability percentages granted among the four ROs, but no differences as to granting service-connection. This finding was reported verbally to VA representatives in a meeting with the GAO when the inquiry was completed in 1975. A formal study was not conducted.

Uniformity of granting of service-connection is also supported by random selection quality review done in VA Central Office. A selection of cases from each regional office Adjudication Division is reviewed each six months for procedural and regulatory correctness. In addition, regional office Adjudication Divisions and Veterans Services Divisions request advisory opinions from VA Central Office for guidance on specific cases. This guidance and quality review is provided by the VA Compensation and Pension Service and includes cases of all categories of veterans who file claims with the VA, not specifically POWs. The Compensation and Pension Service also operates an intensive continuing training program, "Venture in Progress" for all of its staff, including rating board members, to keep them informed and knowledgeable of current regulations and procedures.

SUMMARY

VA procedures for former prisoners of war emerged from recognition of special circumstances regarding support of claims by veterans who experienced extraordinary circumstances of service, such as combat and internment. Sensitivity toward the "places, types and circumstances" of service were specified in legislation in 1941. The particularly severe effects of internment were acknowledged and POW-specific procedures appeared toward the end of World War II. These were emphasized in the years following. As more information on the POW experience was gained, procedures were expanded or stressed in response to other armed conflicts,

public law and the development of medical knowledge. The first special provisions in statute for service-connected compensation determinations appeared in 1970 with Public Law 91-376 and reflected recognition of the rigors of dietary deficiencies, forced labor and inhumane treatment.

Former prisoners of war generally have received special consideration in keeping with statutory and procedural provisions in terms of medical evaluations and disability compensation. Limitations in knowledge as to the long term effects of the stresses and deprivations experienced by prisoners of war is a major obstacle for decisionmakers.

FOOTNOTES

[1] Foreign Claims Settlement Commission of the United States, Annual Report to the Congress for 1977, Washington, D.C., 1978, pp. 50-51.

[2] "Wars Damaged Goods," Newsweek, June 19 1950, reprinted in, U.S. Congress, House, Committee on Veterans' Affairs, H.R. 8848: A Bill to Provide for a Study of the Mental and Physical Sequelae of Malnutrition and Starvation Suffered by Prisoners of War and Civilian Internées During World War II, hearings before a subcommittee of the House Committee on Veterans' Affairs. 81st Congress, 2d session, 1950, p. 1862.

[3] Ibid.

[4] "POW Computer Match - DOD Disability Retirement Records," memorandum in connection with P.L. 95-479, Veterans Administration, Washington, D.C., April 2, 1979.

[5] U.S. Congress, House, Committee on World War Veterans' Legislation, Facilitating Standardization and Uniformity of Procedure Relating to Determination of Service Connection of Injuries or Diseases Alleged to have been Incurred in or Aggravated by Active Service in a War, Campaign or Expedition, Report No. 1157, 77th Congress, 1st Session, 1941, p. 83.

[6] Public Law 361, 77th Congress, (chapter 603 -- 1st Session) An Act: to facilitate standardization and uniformity of procedure relating to determination of service-connection of injuries or diseases alleged to have been incurred in or aggravated by active service in a war, campaign, or expedition, approved December 20, 1941.

[7] Veterans Administration Service Letter, Administrator's Office. "Expeditious Adjudication of Claims for Disability Pension Based on Combat Injuries," December 28, 1943, Paragraph 1(a) and 1(b).

[8] Veterans Administration, Schedule for Rating Disabilities, 1945 edition, U.S. Government Printing Office, Washington, D.C., 1945, pp. 1-2, paragraph (3).

[9] Ibid., p. 13, paragraph 3.

[10] Ibid., p. 88, paragraph 2.

[11] Instruction No. 2, "Instructions Relating to the Rating of Combat Incurred Disabilities," Veterans Administration, Washington, D.C., August 23, 1946.

[12] Program Guides: PG 21-1, Change 184, Section N-25, October 12 1972; PG 21-1, Change 185 Section N-26, December 6, 1972; PG 21-1, Change 239, Section N-13, August 27, 1976.