

**DEPARTMENT OF VETERANS AFFAIRS**  
**Veterans Benefits Administration**  
**Washington, D.C. 20420**

January 11, 2010

Director (00/21)  
All VA Regional Offices and Centers

In Reply Refer to: 211D  
Fast Letter 10-04

SUBJ: Final rule: Presumptive Service Connection for Former Prisoners of War (FPOWs)

**Background**

On October 8, 2008, the Under Secretary for Health advised the Secretary that “there is at least limited/suggestive evidence that an increased risk of osteoporosis is associated with service involving detention or internment as a POW” and recommended establishing a presumption of osteoporosis for FPOWs. The Secretary agreed that the scientific and medical data are reasonably suggestive of an association between POW experience(s) and osteoporosis.

On January 14, 2009, VA published a proposal in the Federal Register (74 FR 2016) to amend regulations at 38 CFR 3.309(c)(2) to establish a presumption of service connection for osteoporosis for POWs who were detained or interned for at least 30 days and whose osteoporosis is at least 10 percent disabling.

Final rulemaking to amend 38 CFR § 3.309(c)(2) by adding osteoporosis to the list of diseases subject to service connection on a presumptive basis for FPOWs was published in the *Federal Register* on August 28, 2009, at 74 FR 44288.

This final rulemaking also amended 38 CFR § 3.309(c)(1) to implement an amendment to 38 U.S.C. 112(b)(2) under Public Law 110-389 allowing a presumption of service connection for osteoporosis when posttraumatic stress disorder (PTSD) is also diagnosed.

**Presumptive Service Connection for Osteoporosis under 38 CFR § 3.309 (c) (2)**

## **(PTSD Not Diagnosed)**

Effective September 28, 2009, a presumption of service connection for osteoporosis for FPOWs who were detained or interned for at least 30 days and whose osteoporosis is at least 10 percent disabling is established. No evidence of osteoporosis during the designated period(s) of service is required for service connection. (This presumption is based, at least in part, on the likely nutritional deprivation experienced during longer (30 days or more) periods of captivity.)

## **Presumptive Service Connection for Osteoporosis under 38 CFR § 3.309 (c) (1) (PTSD Diagnosed)**

Effective October 10, 2008, osteoporosis is added to the list of disabilities presumed to be service connected for FPOWs who were detained or interned for any period of time (i.e., no minimum period of internment is required). However, to qualify for service connection under this regulation, the FPOW must also have a diagnosis of posttraumatic stress disorder (PTSD) and osteoporosis must be evaluated at least 10-percent disabling. (PTSD is the only anxiety disorder recognized by Congress as associated with osteoporosis).

## **Effective Dates**

### **- Presumptive Service Connection Under 38 CFR 3.309(c)(2)**

**Filing Date :** Claim received **on or after** September 28, 2009, or was pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of the law.

**Effective Date:** September 28, 2009, or 1 year prior to the date of application, whichever is later.

### **- Presumptive Service Connection Under 38 CFR 3.309(c)(1)**

**Filing Date :** Claim received **on or after** October 10, 2008, or was pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of the law.

**Effective Date:** October 10, 2008, or 1 year prior to the date of application, whichever is later.

## **Claims with Diagnoses of Both Osteoporosis and Arthritis**

Service connection for osteoporosis is established under 38 C.F.R. § 4.71a, diagnostic code 5013. Under diagnostic code 5013, an affected joint must exhibit manifestations of osteoporosis for evaluation. Many FPOWs have already established service connection for arthritis, a disability that also requires evaluation based on manifestation of symptoms in skeletal joints.

Arthritis is inflammation of a joint. Osteoporosis is defined as “Inadequate bone formation resulting in low bone mass, microscopic deterioration of bone tissue, and increased bone fragility which then results in an increased of fracture. The loss interferes with the mechanical support structure function of bone.”<sup>1</sup>

If diagnoses of both osteoporosis and arthritis were provided, decisionmakers are required to obtain a medical opinion as to the etiology of the symptoms affecting a particular joint or joints.

## **Questions**

Questions concerning the final rulemaking or this letter should be emailed to VAVBAWAS/CO/21FL.

/S/

Bradley G. Mayes

Director

Compensation and Pension Service

1 C & P Medical Electronic Performance Support System (EPSS)