

DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, DC 20420

February 12, 2009

Director (00/21) All VA Regional Offices

In Reply Refer To: 211
Fast Letter 09-09

SUBJ: Readjudication of Claims for AL Amyloidosis (ALA) and Other Diseases Under *Nehmer*

Background Information

On June 10, 2008, the Secretary sent a letter to the Chairman of the Committee on Veterans' Affairs, U.S. House of Representatives, stating that VA concluded the evidence established a presumption of service connection for ALA based on the exposure to herbicides in the Republic of Vietnam during the Vietnam era. As described below, a proposed regulation adding ALA to VA's list of presumptive diseases associated with herbicide exposure in Vietnam was recently published. Under the court order of the U.S. District Court for the Northern District of California in *Nehmer v. U.S. Department of Veterans Affairs*, C.A. No. C-86-6160 TEH (N.D. Cal.), VA must provide retroactive benefits to certain *Nehmer* class members (Vietnam veterans and their survivors) who filed claims for ALA, and other diseases listed in 38 CFR § 3.309(e), using 38 CFR § 3.816. This requirement involves claims filed or denied during the period from September 25, 1985, to the effective date of the VA regulation establishing a presumption of service connection for the disease claimed.

Accountability

Regional offices (RO) must strictly comply with the instructions set forth in this letter and attachments. It is critical that *Nehmer* claims be handled expeditiously and correctly. The processing of *Nehmer* claims requires VA to operate under courtimposed deadlines. Failure to comply with

instructions could result in court-ordered sanctions against VA and/or VA officials.

Regulatory Guidance

On September 29, 2008, the Deputy Secretary approved a proposed regulation to amend 38 CFR § 3.309(e) by adding ALA to the list of diseases presumptively associated with exposure to herbicides. The proposed regulation was subsequently published in the Federal Register Vol. 73, 65280 (Nov. 3, 2008). Publication of the final rule is expected in the near future. Accordingly, processing of *Nehmer* ALA claims should begin immediately. Such processing pertains to the adjudication and readjudication of all ALA claims from *Nehmer* class members and must take place consistent with 38 CFR § 3.816. See enclosure 1 for guidance on the claims review process.

Regional Office Action(s) for Temporary Transfer of the Claims Files to the PRC

The Office of Field Operations (OFO) will send each RO an encrypted e-mail containing a spreadsheet listing the ALA claims files to be temporarily transferred to the Philadelphia Resource Center (PRC) and a deadline for their transfer. Upon receipt of this list, the RO will locate and immediately transfer the affected files to the PRC. The list will be updated each month and will show the location of each file identified by VA as potential *Nehmer* ALA class member. The RO will provide the PRC and OFO with specific information about efforts taken to retrieve claim files that cannot be easily located.

ROs will expedite the request for temporary transfer of the claims files to the PRC and update COVERS by the established deadline noted in the e-mail message. The claims files will be maintained in the PRC for approximately two to three months or until OFO has authorized return of the claims file to the regional office.

- o If the claims file is not found, immediately initiate search procedures for the missing claims file and forward the red rope, death (NOD), or rebuilt

claims file upon receipt. It is important that you make every effort possible to locate the original claims file.

- o If the claims file is located at your RO but is charged out and/or at the Board of Veterans' Appeals, the RO of jurisdiction should expedite search/return of the claims file and send to the PRC.

- o If the file has been retired to a records center (Records Management Center/Federal Records Center), the RO of jurisdiction should request the claims file and forward to the PRC.

- o If the claims file has been permanently transferred to another RO, update the spreadsheet and notify the PRC (Mr. Fred Johnson) by e-mail [do NOT request the other RO to transfer the file].

- o In the remarks section of the COVERS transfer slip, annotate "ALA." It is important that we keep these claims files separate from other requests sent to the PRC. Refer to VBA Letter 20-06-44 dated July 3, 2006, for the specific requirements for shipping claims files.

Where to Ship the Claims Files

Use the following address for shipment of claims files:

Department of Veterans Affairs
Resource Center (21RC)
ATTN: Fred Johnson
5000 Wissahickon Ave
Philadelphia, PA 19144

The PRC contacts are Fred Johnson at 215-842-2000, extension 4669, or Leslie Bartee at 215-381-3019.

Centralized Location for Processing AL Amyloidosis *Nehmer* Claims

Due to the priority and complexity of ALA claims, this workload is centralized at the Philadelphia Resource Center (PRC).

The PRC will update COVERS upon receipt of the claims file from the RO of jurisdiction.

The PRC will prepare the necessary rating, award action(s), and notice of decision including development actions based on its review.

The PRC will conduct a quality review with the claims file of the rating, award action(s), and notice of decision to include development actions prior to forwarding these documents to the Compensation and Pension (C&P) Service for secondary review.

The PRC will electronically forward the rating, award action(s), and notice of decision to C&P for a secondary review(s) prior to the authorization of the award action(s) and release of the notice of decision to the claimant(s). C&P will consult with the Office of the General Counsel (OGC) when needed on any issues involving these claims.

The PRC will forward a dated copy of the approved rating(s) to include code sheet and notice of decision weekly to OGC for each claimant and for each issue via overnight mail and in accordance with VBA Letter 20-06-44 dated July 3, 2006.

The PRC will establish and maintain an electronic database to track each claim from the beginning of the process (request of the claims file) to end of the process (copy of rating and notice of decision forwarded to OGC). C&P and OFO will have “read-only” access to database.

o In addition, the PRC will document in the electronic database any undeliverable mail due to an invalid address and any instance where VA is unable to identify and/or locate a claimant (veteran/survivor).

The PRC will make every effort possible to locate a valid address for the claimant(s) in any instance where mail has been returned undeliverable due to an invalid address. If a valid address is located, the PRC will resend the rating, award action(s) and notice of decision to the valid address and update the electronic database to track these actions.

Date of Claim and End Product Credit

Currently, VA is aware of approximately 550 ALA *Nehmer* claims. This number may increase as additional database searches are conducted. The PRC will control the approximate 550 ALA *Nehmer* reviews, and any subsequently identified *Nehmer* ALA claim under end product 686 using the date of receipt of the claims file as the date of claim. The PRC will clear the end product upon completion of the review.

Nehmer Claims for Diseases Other Than ALA

Nehmer reviews conducted by the RO will establish the date of claim as the date of receipt of the claim and/or requested information based on a prior claim(s). The RO will establish the end product appropriate for the type of claim reviewed (i.e. 115, 025, 145, 160, etc.).

Medical Records and Examinations

To properly adjudicate a claim for service connection, obtain and review relevant medical treatment records and, where appropriate, order VA examinations.

Specifically, note the following:

- Request and review VA and private medical treatment records relating to the claimed disability.
- Request a VA examination to evaluate the claimed disability and/or any complications related to the medical disability when it is necessary to decide the claim (as, for instance, in diabetes claims). Examination requests should list any secondary conditions noted in the initial review of the claims file.
- Work with your local VA medical centers to determine the quickest way to obtain pertinent evidence, including a VA examination or a medical opinion.

Effective Dates

Under *Nehmer*, you must award the earliest possible effective date in accordance with 38 CFR § 3.816. Legal questions about the interpretation of the effective date provisions pertaining to *Nehmer* ALA claims may be referred to Martin Sendek of VA's Office of General Counsel. Mr. Sendek can be reached on (202) 461-7659 or via e-mail at martin.sendek@va.gov.

Notification Requirements

RO and PRC

A notice of decision, including appellate rights, must be sent to each class member who receives a review under *Nehmer*. See enclosure 2 for the notice of decision letter template.

PRC Only

Prepare a memorandum for record purposes if you determine that the listed claim number or name is invalid (i.e., the listed information cannot be associated with any claims file or any Vietnam veteran who suffers from ALA). The memorandum should describe all attempts to identify the veteran using the available information, and the basis for the conclusion that the claim number is erroneous. A notice of decision letter is not required in this instance.

If a rating decision is not required (i.e., the correct effective date and level of disability is already assigned), prepare a memorandum for record purposes, and notice of decision to claimant. See enclosure 3 for the memorandum for record purposes template.

Whom To Contact for Help

If you have questions or need additional information, e-mail your inquiry to the Q&A mailbox at VAVBAWAS/CO/NEHMER.

Rescission

This letter rescinds Fast Letter 06-16, Re-adjudication of CLL and Other Claims Under *Nehmer*.

/S/

Bradley G. Mayes
Director
Compensation and Pension Service

Enclosures

1. Review of Claims for Possible Retroactive Benefits Under *Nehmer* Order
2. Notification Template
3. Memorandum for Record Purposes Template

ENCLOSURE 1: Review of Claims for Possible Retroactive Benefits Under *Nehmer* Order

1. History of *Nehmer* Case: Because we are only providing guidance here on how to proceed in the review of claims affected by the *Nehmer* court's April 28, 2006, order, we will not recite the lengthy history of the *Nehmer* case. Additional information concerning this case may be found in the district court's reported decisions at 712 F. Supp. 1404 (N.D. Cal. 1989) and 32 F. Supp. 2d 1175 (N.D. Cal. 1999); the district court's unreported December 12, 2000, order; the 1991 Final Stipulation & Order of the parties to the *Nehmer* case; and Fast Letter 99-86. These materials were attached to the letter on prostate cancer cases, which was sent to all VA Regional Offices by C&P on July 17, 2001.

2. Background: On December 12, 2000, a district court issued an order in the class action *Nehmer v. United States Veterans Administration*, Civil Action No. C86-6160 TEH (N.D. Cal.), that required assignment of earlier effective dates for certain awards of service-connected disability compensation and dependency and indemnity compensation (DIC) based on the presumption of service connection for certain diseases associated with herbicide exposure under 38 C.F.R. §§ 3.307(a)(6) and 3.309(e). As defined by the district court, the "*Nehmer* class" consists of "all current or former service

members (or their survivors) who are eligible to apply for benefits based on dioxin exposure or who have already applied and been denied claims for benefits based on dioxin exposure.” *Nehmer v. United States Veterans’ Administration*, 712 F. Supp. 1404, 1409 (N.D. Cal. 1989). The district court later stated that its orders require VA to pay full retroactive benefits to class members, to the survivors of deceased class members, or, if there are no survivors, to the deceased class members’ estates. The regulation that governs adjudication of *Nehmer* claims is 38 C.F.R. § 3.816. To assist in the prompt processing of these claims under *Nehmer*, we provide the following guidance with respect to applicable legal standards.

3. General Effective-Date Rules: Pursuant to the *Nehmer* court orders as codified in 38 C.F.R. § 3.816, the rules governing the effective date of compensation and DIC awards based on ALA presumptively due to herbicide exposure are the same as the rules for other presumptive herbicide conditions. The fact that some ALA claims may have been filed and/or denied at a time when, under valid VA regulations, ALA was not considered associated with herbicide exposure is irrelevant. The following rules govern effective dates for these claims:

A. If a *Nehmer* class member claims compensation for ALA (or any disease presumptively due to herbicide exposure) or claims DIC based on death due to ALA, and was denied between September 25, 1985, and the effective date of VA’s final rule adding ALA to the list of diseases presumptively associated with exposure to herbicides, the effective date of benefits is the date of the earlier claim, or the date the disability arose or death occurred, whichever is later. For purposes of *Nehmer* ALA claims, the date a disability arose is the date VA had sufficient information to “code” ALA as a disability pursuant to guidance regarding coding contained in the Veterans Benefits Adjudication Manual M21-1MR, and/or prior versions of such manual.

B. Where an ALA claim is submitted after VA’s final rule adding ALA to the list of presumptive diseases, the claim must be evaluated to see if there is a basis to conclude that the individual is a *Nehmer* class member. If the claimant is not a *Nehmer* class member the effective date provisions contained in this document do not apply. In making this determination, VA should examine whether there is a basis in the record to establish that a valid formal or informal claim seeking service connection for ALA was filed prior to the effective date of the final rule adding ALA to the list of presumptive diseases, or VA had sufficient information in the claims file at the time of a prior rating decision to determine the veteran had ALA.

In claims under either (A) or (B), above, the rules in 38 U.S.C. § 5110(b)(1) and (d)(1) may be applied to permit an effective date corresponding to date of discharge or date of death, if supported by the facts of the case. However, because ALA is not often diagnosed until long after the servicemember is released from military service, it is anticipated that such cases will be infrequent.

Caveat: It is important to note that the general rule in 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.114 that an award based on a liberalizing law may not be effective earlier than the effective date of the new law does not apply to *Nehmer* claims. The district court's 2000 order precludes VA from applying that general rule.

4. Claim Need Not Reference Herbicide Exposure: In its February 11, 1999, order in *Nehmer*, the district court held that a *Nehmer* class member's compensation or DIC claim need only have requested service connection for the condition in question in order to qualify as a *Nehmer* claim. It is not necessary that the class member assert in his/her claim that the condition was caused by herbicide exposure.

Example: A veteran who served in the Republic of Vietnam during the Vietnam era filed a claim in 1994, alleging that his ALA began while on active duty *following his service in Vietnam*. VA denied the claim in 1995.

The veteran reopens the claim in 2009, and service connection is granted based on VA's herbicide regulations. On these facts, the effective date must relate back to the 1994 claim, even though the veteran alleged a different basis for service connection.

5. Prior Claim Must Have Involved ALA: To support a retroactive effective date under *Nehmer*, the prior claim must have been for the same disability that was the basis for the later award of benefits. Thus, if a prior claim (express or inferred) did not involve service connection for ALA, or a condition that could reasonably be construed as ALA, it generally would not provide a basis for an earlier effective date under *Nehmer*. To this end, the usual liberal rules of claim construction will apply, and a lack of specificity in the initial application may be clarified by later submissions and/or medical reports provided by VA or other medical professionals.

Example 1: In January 1987, a veteran claimed compensation for lymphoma amyloidosis. In developing that claim, VA obtained medical records indicating that the veteran was diagnosed with ALA in February 1987. On these facts, it could be reasonable to treat the January 1987 claim as a claim

for service connection of ALA. Under *Nehmer*, benefits may be paid retroactive to the date of that claim or the date the disability arose, whichever is later, as determined by the facts of the case.

Example 2: In April 1995, a veteran claimed compensation for ALA. Medical records obtained by VA indicate the veteran did not have ALA, and there was no evidence in the record to support the veteran having this disease at that time. In 2001, the veteran claimed compensation for ALA, submitting evidence that ALA was diagnosed in January 1996. On these facts, the 1995 claim was not a claim for service connection of ALA, as neither the application nor the evidence of record suggested the presence of ALA. However, retroactive benefits could be paid based on the 2001 ALA claim.

Because DIC claimants generally are not required to identify specific diseases in their applications, the absence of specific reference to ALA in a prior DIC application will not preclude assignment of a retroactive effective date under *Nehmer*, provided the evidence establishes that ALA caused the veteran's death.

6. Informal Claims: Generally, under 38 U.S.C. § 5101(a), “[a] specific claim in the form prescribed by the Secretary . . . must be filed” in order for any benefits to be paid. However, in determining whether, and on what date, a prior claim for service connection of ALA was received, either formal claims or acceptable informal claims may be recognized. It is necessary to consider whether there are documents in the record that may be accepted as an informal claim for such benefits, under the standards ordinarily applied with respect to informal claims. See 38 C.F.R. § 3.155. The following principles should be considered.

(A) Informal Claims to Reopen: If a prior formal claim for compensation for ALA or for DIC is of record, an informal claim to reopen may be accepted. See 38 C.F.R. § 3.155(c).

Example: A veteran filed a formal claim for service connection of ALA in November 1979. VA denied the claim in January 1980. In May 1986, the veteran submitted a letter stating, “please consider service connection for ALA.” On these facts, the May 1986 letter is an acceptable informal claim to reopen, and benefits may be paid retroactive to May 1986 under *Nehmer*.

(B) VA Failure to Forward Application Form: Upon receipt of an informal claim for benefits, if a formal claim is not already of record, VA is required to forward the claimant an application form for completion. See 38 C.F.R. §

3.155(a). The United States Court of Appeals for Veterans Claims (CAVC) has held that, if VA receives an informal claim, but fails to forward an application form to the claimant, the one-year period for completing and returning the application does not begin to run. *Lalonde v. West*, 12 Vet. App. 377, 381 (1999). In these circumstances, benefits may be paid retroactively to the date of the informal claim, due to VA's failure to provide an application form.

Example: In 1994, a veteran filed a claim for nonservice-connected pension. After VA denied the claim, the veteran filed a statement in 1995 saying, "I disagree with your decision denying pension. I also should be paid compensation for ALA." VA did not forward the claimant an application form and did not adjudicate any claim for service connection of ALA. On these facts, the 1995 statement may be accepted as an informal claim for ALA. The veteran's failure to file a formal claim for compensation within one year is excused due to VA's failure to provide the application form.

(C) Medical Records: The submission of medical records reflecting treatment for ALA generally does not, in itself, constitute an informal claim for service connection of that condition. *See Brannon v. West*, 12 Vet. App. 32, 35 (1998). However, attention must be paid to the circumstances of each case to determine whether the claimant's written submissions, viewed in connection with submitted medical records, may establish an informal claim.

7. Death Pension Claims Must Be Treated as DIC Claims: Under 38 U.S.C. § 5101(b)(1), "a claim by a surviving spouse or child for death pension shall be considered to be a claim for death compensation (or dependency and indemnity compensation) and accrued benefits." *See also* 38 C.F.R. § 3.152 (b)(1). This rule applies even if the claimant's application expressly indicates that the claimant sought pension only and did not allege that the cause of death was service connected. The CAVC has stated that section 5101(b)(1) "does not . . . permit the Secretary to delve into the intent of the claimant; nor does it allow a claimant to make an election. As a matter of law, a claim for DIC shall be considered as a claim for pension and a claim for pension shall be considered a claim for DIC." *Isenhardt v. Derwinski*, 3 Vet. App. 177, 179 (1992).

Example: A veteran died of AL amyloidosis. In 1988, the surviving spouse filed a VA Form 21-534 (application for DIC/death pension), and marked "no" in response to the question "are you claiming that the cause of death was due to service?" Accordingly, VA adjudicated a claim for pension only. In 2009, the surviving spouse applies for DIC, which is granted. Under

these circumstances, the award may be made retroactive to the 1988 application, because it must be treated as a DIC claim.

8. Live Pension Claims *May* Be Treated as Compensation Claims: Under 38 C.F.R. § 3.151(a), “a claim by a veteran for pension may be considered to be a claim for compensation.” VA is not required by law to treat a veteran’s claim for pension as a claim for compensation, *see Stewart v. Brown*, 10 Vet. App. 15, 18 (1997), but may do so in appropriate circumstances.

Adjudicators should exercise judgment as to whether the circumstances of a case warrant treating a pension claim as a claim for compensation for ALA.

9. Claim for Service-Connected Burial Benefits Must Be Treated as Informal DIC Claim in Certain Circumstances: A claim for burial benefits does not constitute a formal claim for DIC. However, in *Mitscher v. West*, 13 Vet. App. 123, 128 (1999), the CAVC held that a claim for service-connected burial benefits must be treated as an informal claim for DIC in certain circumstances, for purposes of entitlement to retroactive benefits under *Nehmer*. That case indicates that if a claim for burial benefits (VA Form 21-530) indicates that the surviving spouse alleges that the cause of death was due to service, VA must forward the claimant an application for DIC (VA Form 21-534) in accordance with 38 C.F.R. § 3.155(a). If the completed VA Form 21-534 is received within one year, benefits may be paid from the date of the claim for service-connected burial benefits.

The *Mitscher* decision implies that if VA failed to forward the application form to the claimant, the one-year period would not begin to run, and benefits may be paid from the date of the claim for service-connected burial benefits. If VA properly forwarded the application form and the claimant failed to return it within one year, then the claim for burial benefits should not be considered a claim for DIC.

Example 1: In 1995, a surviving spouse filed an application for burial benefits (VA Form 21-530) and marked “yes” in response to the question “are you claiming that the cause of death was due to service?” VA forwarded the claimant an application for DIC (VA Form 21-534). The claimant returned the completed DIC application within one year. On these facts, the date of the 1995 application for burial benefits may be accepted as the date of the DIC claim for purposes of *Nehmer*.

Example 2: Same facts as Example 1, except that the claimant failed to return the completed DIC application. On these facts, the 1995 application for burial benefits should not be considered a claim for DIC.

Example 3: In 1995, a surviving spouse filed an application for burial benefits (VA Form 21-530) and marked “yes” in response to the question “are you claiming that the cause of death was due to service?” VA did not forward an application for DIC. On these facts, DIC may be paid retroactive to the 1995 application for burial benefits, if otherwise in order. The one-year period for filing a completed DIC application did not begin to run due to VA’s failure to provide the application form.

10. Prior Claim Denied for Reasons Other Than Lack of Service

Connection: If a prior claim for compensation or DIC for disability or death due to ALA was denied for some reason other than a lack of service connection, there may not be a basis for awarding an earlier effective date under *Nehmer* based on the prior claim. For example, if the prior claim was denied because there was no evidence that the veteran had ALA or any condition that could reasonably be construed as ALA, retroactive benefits generally would not be in order. Similarly if the prior claim was abandoned or withdrawn, there would not be a basis for retroactive payments under *Nehmer*. Cases involving this type of issue should be referred to the Q&A mailbox identified at the end of this enclosure.

11. Criteria governing payment of retroactive benefits in the event a *Nehmer* class member has died prior to receiving payment.

(A) Entire Amount of Retroactive Benefits May Be Paid to Survivors or Estate, Without Regard to Statutory Limit on Payment of Accrued Benefits: The district court has held that, if a *Nehmer* class member dies prior to receiving payment of retroactive benefits he or she would have been entitled to under the *Nehmer* review, VA is required to pay the entire amount of such benefits to the class member’s survivors or, if there are no survivors, to the class member’s estate. Significantly, the court held that payment of such benefits is not governed by 38 U.S.C. § 5121(a), which does not provide for payment of retroactive benefits to estates. Accordingly, if a class member was entitled to retroactive benefits for any period prior to death, VA is required to pay the entire amount to the appropriate alternate payee. Standards governing identification of the appropriate alternate payee are discussed below.

(B) Identifying Appropriate Payee: As stated above, the district court directed VA to pay retroactive benefits to the survivors or estate of a deceased class member. VA will make payment to the class member’s surviving spouse, child(ren), or parent(s), if any. If there are no such survivors, VA must pay the retroactive benefits to the class member’s

estate, if VA is able to identify an estate for payment. Accordingly, in the event a class member who would be entitled to payment of retroactive benefits under *Nehmer* is deceased, payment must be made to the first individual or entity in existence listed below:

- the class member's spouse;
- the class member's child or children (if more than one child exists, payment of the retroactive benefits owed shall be divided into equal shares, and accompanied by an explanation of the division; this includes all children, regardless of age or marital status);
- the class member's parents (if both parents are alive, half the retroactive benefits owed shall be paid to each parent, and accompanied by an explanation of the division);
- the class member's estate.

Accordingly, if there is a surviving spouse, child(ren), or parent(s), any retroactive payments should be paid to such individuals rather than to the estate.

(C) Circumstances Where VA Cannot Identify Any Appropriate Payee: If a class member is deceased and the claims file does not clearly identify an eligible survivor, VA must make such reasonable inquiry as the information on file permits.

For example, if the claims file identifies an authorized representative or a relative, it would be reasonable to contact such person to request information concerning the existence of a surviving spouse, child(ren), parent(s), or the executor/administrator of the veteran's estate. If a RO cannot identify or locate any such payee, it must prepare a memorandum stating the reasons why it was unable to complete payment of retroactive *Nehmer* benefits. Additionally, the RO should notify Central Office by e-mail that no payee could be identified, including the claimant's name and file number in the message. Likewise, if a RO encounters a situation where the deceased class member was an incompetent veteran and payment of the accrued amount would be made to an estate that would escheat to the state, it should refer the matter to Central Office through the Q&A mailbox identified at the end of this enclosure.

12. Fast Letter 99-86, "The *Nehmer* lawsuit and the granting of retroactive Agent Orange benefits": Paragraph 10 of Fast Letter 99-86 states that

retroactive benefits are appropriate only if a claim was both filed and denied after September 25, 1985. This is not correct. The correct rule is that the claim need only have been denied on or after September 25, 1985. (It may have been filed prior to that date.)

13. Questions: Questions regarding the foregoing, or any matters arising in the review of individual *Nehmer* cases may be referred to the Q&A mailbox at VAVBAWAS/CO/NEHMER.

ENCLOSURE 2: Notification Template

The Secretary has established that AL amyloidosis warrants presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of ALA.

We conducted a special review of your file. Based on the review, we made a decision on your claim for service-connected compensation. In performing this review, we considered all claims and medical evidence in your claims folder.

[Enter a summary of the headings included in the body of the letter, e.g., This letter tells you what we decided. We have also included information about what to do if you disagree with our decision, and whom to contact if you have questions or need assistance.]

A list of the headings to be included in the letter are shown below, however, this list is not all inclusive:

What Is Your Entitlement Amount and Payment Start Date? *[Optional heading to be used if payment is involved]*

When Can You Expect Payment? *[Optional heading to be used if payment is involved]*

Why Have We Withheld Benefits? [Optional heading to be used if retired pay/SBP is involved]

What Did We Decide? *[If a copy of the memorandum is enclosed in the notice letter, remove the signature block.]*

How Did We Make Our Decision? *[If a copy of the memorandum is enclosed in the notice letter, remove the signature block.]*

What Evidence Did We Use To Decide Your Claim?
[If a copy of the memorandum is enclosed in the notice letter, remove signature block.]

Are You Entitled to Additional Benefits? [Optional heading]

What You Should Do if You Disagree With Our Decision. If you do not agree with our decision, you should write and tell us why. You have *one year from the date of this letter to appeal the decision*. The enclosed VA Form 4107, "Your Rights to Appeal Our Decision," explains your right to appeal.

Do You Have Questions or Need Assistance?

If you have any questions or need assistance with this claim, please call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.

If you call, please refer to your VA file number 123-45-6789. If you write to us, put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter. You can visit our web site at www.va.gov for more information about veterans' benefits.

We have no record of your appointing a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized veterans' service organizations and/or representatives. Veterans' service organizations, which are recognized or

approved to provide services to the veteran community, can also help you with any questions.

ENCLOSURE 3: Memorandum for Record Purposes Template

SUBJ: Review Under *Nehmer*

Issue(s): Clearly state all issues of entitlement identified by the claimant or inferred based on the facts or circumstances of the claim. [*List the disability/disabilities and the current assigned evaluation(s). Also, specify any complications or other recognized herbicide-related conditions and the current assigned evaluation(s).*] See M21-1MR, Part III, iv.6.B.2.

Evidence: Cite all evidence considered in arriving at the decision. See M21-1MR, Part III, iv.6.C.10.

Decision: Clearly and concisely state the decision made on each issue or inferred issue. See M21-1MR, Part III, iv.6.C.9.

Reasons for Decision: Provide a detailed chronological summary of the procedural history of the case outlining prior decision(s), and the reasons and bases for them. The summary should support the conclusions with the necessary level of analysis and explanation. See M21-1MR, Part III, iv.6.C.11. Provide the reasons for any denial.