



NVLSP
NATIONAL VETERANS LEGAL SERVICES PROGRAM

Self-Help Guide: How to Obtain VA Disability Benefits for a Burn Pit-Related Medical Condition When VA Previously Denied You Service Connection for the Condition

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Disclaimer

This self-help guide provides general information only. It does not constitute legal advice. It also cannot substitute for advice from a VA-accredited representative or attorney who knows the particulars of your case. Use the information in this guide at your own risk. We have made every effort to provide reliable, up-to-date information, but we do not guarantee its accuracy. The information in this guide is current as of August 2022.

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Please do not appoint NVLSP to represent you before the VA without our express consent.

Who is this guide for?

Before August 10, 2022, thousands of veterans were denied service-connected disability benefits by the Department of Veterans Affairs (VA) for a medical condition resulting from exposure to burn pits and other toxins during military service. This self-help guide is written for those veterans previously denied service connection, but who can now become entitled to VA disability benefits because of a new law - the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act. The Honoring Our PACT Act took effect on August 10, 2022 and requires the VA to presume that 25 different medical conditions – including many cancers – are related to exposure to burn pits and other toxins.

These 25 medical conditions are listed on page 3 of this guide. **If you suffer from one of these medical conditions, and VA previously denied you disability benefits for this same medical condition, this guide describes the steps you can take to obtain VA disability benefits.**

We hope this self-help guide will be helpful as you make your way through the VA claims process. We strongly encourage you to contact another Veterans Service Organization (VSO) if you need help with the stages of the process described below. We also encourage you to visit <https://www.va.gov/resources/the-pact-act-and-your-va-benefits/> for more information about how the PACT Act may impact your eligibility for disability benefits.

This guide **does not discuss** how you can obtain VA disability benefits if the VA previously denied you service connection for a medical condition that is **not listed** on page 3 of this guide. If you are one of these veterans, NVLSP may be able to represent you on a disability claim based on that medical condition, at no cost to you. Please visit <https://www.nvlsp.org/what-we-do/burn-pits-claims-assistance-program/> for more information about NVLSP's Burn Pits Claims Assistance Program, or to apply for this program.

How do I prove I have a burn-pit related condition?

When you apply for VA disability benefits, you have to show that your disability is “service connected.” That usually means you have to show the disability likely resulted from, or was aggravated by something that occurred during your active duty service. If you can't show this, the VA will usually deny your claim.

Fortunately, for some medical conditions, proving service connection is easy, because the condition qualifies for what is known as **presumptive service connection**. That means that, under the law, VA must presume your medical condition is related to your service if (1) you are **diagnosed** with one of the presumptive conditions and (2) you have a **qualifying period of service**.

What are the presumptive conditions?

On August 10, 2022, the Honoring our PACT Act became law. The law made 25 medical conditions **presumptively service connected** for veterans with a qualifying period of service. Those conditions are as follows:

- Asthma (if diagnosed after service)
- Chronic bronchiolitis or obliterative bronchiolitis
- Chronic bronchitis
- Chronic rhinitis
- Chronic sinusitis
- COPD
- Emphysema
- Granulomatous disease
- Interstitial lung disease
- Pleuritis
- Pulmonary fibrosis
- Sarcoidosis
- Brain cancer
- Gastrointestinal cancer
- Glioblastoma
- Head cancer
- Kidney cancer
- Lymphoma cancer
- Lymphomatic cancer
- Melanoma
- Neck cancer
- Pancreatic cancer
- Reproductive cancer
- Respiratory cancer

President Biden and the VA have announced that all of these conditions qualify for presumptive service connection as of August 10, 2022, the date the PACT Act was signed into law.

What is a qualifying period of service?

You have a qualifying period of service if you served on active duty service in:

- Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, the United Arab Emirates, the neutral zone between Iraq and Saudi Arabia, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, or the Red Sea, on or after August 2, 1990; *or*
- Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, or Uzbekistan on or after September 11, 2001.

It is important to understand that to be entitled to service connection, it does not matter how long after discharge from a qualifying period of service the presumptive condition first manifest itself.

How can I obtain VA disability compensation for one of the 25 medical conditions covered by the PACT Act?

*In addition to the tips below, we **strongly encourage** you to read the instructions included with the claim forms.*

If you have been denied service-connected disability compensation by the VA for a medical condition in the past, but that same condition is one the 25 medical conditions listed on page 3 of this guide (that is, the conditions that qualify under the PACT Act for a presumption of service connection), the best course of action to take will depend on how long ago the VA denied your prior claim.

Please take a look at the two sections below and read the advice underneath the section that describes the date of the last VA decision denying you service connection for the medical condition.

Section #1: The VA denied your claim more than one year before the date you are reading this guide.

Section #1 of this guide applies to veterans (1) whose claim for service connection was denied **more than one year before the date you are reading this guide**; (2) the veteran did not appeal within one year of the date of denial; and (3) the medical condition(s) that was the subject of the denial is one of the 25 medical conditions that are now presumptively service connected. For you to obtain service connection for this medical condition, you need to submit a **supplemental claim** for benefits. To file a **supplemental claim**, use a [VA Form 20-0995](#).

You can file your supplemental claim in one of two ways:

- **Electronically** – Through VA.gov
- **By Mail** – Mail your form, along with any evidence you have to support it, to:
Department of Veterans Affairs
Claims Intake Center
PO Box 4444
Janesville, WI 53547-4444

Having trouble finding the right form? The VA posts its forms at <https://www.va.gov/find-forms/>

If you have a diagnosis for a presumptive condition and a qualifying period of service, the VA should grant you service connection, and it will usually pay you benefits retroactive to the date it received your supplemental claim. If you file the supplemental claim **within one year** of the creation of a new presumption (meaning August 10, 2022 for PACT Act presumptions), the VA will pay you benefits retroactive to that date. More on this below.

Do I need to submit additional evidence with my supplemental claim?

Part III of the required form -- VA Form 20-0995 – says that to complete your application, you must submit or tell the VA about new and relevant evidence in support of your supplemental claim. But in your type of case, the PACT Act serves as your new and relevant evidence. This means that you are free to submit additional evidence with your supplemental claim, but you are not required to do so. To make sure the VA follows the law, we suggest that you:

- write in Box 13B of your supplemental claim form the date of the VA decision that last denied your disability claim for one of the medical conditions listed on page 3 of this guide; and
- write in Box 13A, the following: Under the PACT Act, I deserve presumptive service connection for the following conditions: [list each medical condition you suffer from that appears on page 3 of this guide].

In some cases, veterans may want or need to submit more evidence with their supplemental claims. For example, the VA will not grant your supplemental claim if your VA claims file does not contain sufficient medical evidence that you suffer from the medical condition for which you are seeking benefits. In many cases, when the VA previously denied service connection, it already had a medical

diagnosis showing that the veteran suffered from the medical condition in question. But in your case, if the VA does not yet have any medical records showing you've been diagnosed with your claimed condition, you may want to obtain and submit this diagnosis with your claim. While not required, you can do this by going to a private, non-VA doctor and asking the doctor to fill out a Disability Benefits Questionnaire (DBQ) for you. These "DBQs" contain questions about the symptoms and history of your condition, which will help the VA decide whether to grant you service connection and, if they do, what disability rating to give you. You can find a list of DBQs here:

https://www.benefits.va.gov/compensation/dbq_publicdbqs.asp.

Instead of getting medical records yourself, you can also tell VA to try to get them for you. To do that for non-federal medical records, complete and submit a [VA Form 21-4142](#) and a [VA Form 21-4142a](#) with your claim. The VA will contact you if it isn't able to obtain these records, usually by sending you a letter in the mail. For federal medical records, like records from the VA, simply list the name and location of the place where you received treatment in Box 15 of your supplemental claim form.

Finally, the VA may ask you to report to a VA medical exam if it thinks you need one for VA to decide your claim (for example, if you do not yet have a diagnosis for the claimed condition on file). This is part of the VA's **duty to assist** with your claim, which requires VA to help you gather the evidence needed to prove your claim. It is important you show up for exams the VA schedules for you. If you don't, your claim will be decided based on the evidence the VA already has.

Is there a deadline by which I must submit my supplemental claim?

No. On the other hand, how long you take to file your supplemental claim can affect the amount of retroactive benefits to which you are entitled. **August 10, 2023 is an important date.** If VA receives your supplemental claim by that date and ultimately grants service connection, it will pay you disability compensation retroactive to August 10, 2022 – the date the Honoring our PACT Act became law. In other words, you could file your supplemental at any time before August 10, 2023, and if the VA grants the claim, it will pay you compensation retroactive to August 10, 2022. Of course, it is true as a general matter that the sooner you file a supplemental claim, the sooner the VA will decide the claim.

On the other hand, if VA does not receive your supplemental claim until, for example, October 2023, it will likely only pay you disability compensation retroactive for one year at the earliest – to October 2022 – instead of to August 10, 2022. In other words, for each month of delay in filing after August 2023, you will lose the opportunity to receive one month of retroactive compensation. That is because the law limits retroactive compensation to 12 months before the date VA receives the supplemental claim.

Fortunately, there is a way to avoid losing retroactive compensation due to the length of time it takes to complete the supplemental claim form and assemble the evidence, if any, you want to submit. You can file what is called "**an intent to file a claim.**" This is easy to do, and best of all, it can help you avoid losing retroactive compensation due to the length of time it takes to complete the supplemental claim form or gather new evidence. The advantage of the intent to file a claim is that as long as a supplemental claim form is received by VA within one year after the date it received the intent to file a

claim, **the VA will adopt the date it received the intent to file a claim as the date it received the supplemental claim.** This legal fiction allows veterans to avoid losing retroactive compensation.

Let's take an example. You want to file a supplemental claim with additional evidence, but August 10, 2023 is fast approaching. If the VA receives your intent to file a claim before August 10, 2023, you will benefit in two ways – you will have an additional year to submit the supplemental claim form and if your supplemental claim is ultimately granted, you will receive disability compensation retroactive to August 10, 2022.

Let's take another example. Assume it is now December 2023, and you have not yet filed a supplemental claim. Our advice is to try to quickly submit a complete supplemental application form for a presumptive condition in December 2023 so that if the claim is ultimately granted, you will receive benefits retroactive to December 2022. But if you cannot quickly submit a complete supplication application because of the time it takes to complete the form or get needed evidence, you can file an intent to file a claim and you will also receive benefits retroactive to December 2022 -- as long as you submit a complete supplemental claim form within one year after you submit the intent to file form and that claim is granted.

There are four ways to file your intent to file a claim:

- **Electronically** – Through VA.gov
- **By mail** – Mail a VA Form 21-0966 (Intent to File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC) to VA at:
Department of Veterans Affairs
Claims Intake Center
PO Box 4444
Janesville, WI 53547-4444
If you mail your form, we recommend using certified mail so you know the VA has received it.
- **In Person** – Bring the VA Form 21-0966 to your local Regional Office. You can find the address of your local regional office at: <https://www.va.gov/find-locations/?facilityType=benefits>
- **By Phone** – Call the VA at 1-800-827-1000. Tell them you intend to file a claim for compensation.

Once you file a supplemental claim, the VA will reach out to you to ask if you want to send any more evidence. If you do not respond to them within 30 days, they can start to decide your claim. So, **it's important to send them any evidence they ask for as quickly as possible.**

Section #2: A VA regional office denied your claim less than one year ago and you have not yet taken any action regarding the denial

Our advice depends on whether the VA regional office denial was dated before or after August 10, 2022. Please note that the advice in this section does not apply to HLR denials or Board of Veterans' Appeals denials.

If your denial for a condition listed on page 3 of this guide was dated **after** August 10, 2022, it is likely that your claim was wrongly denied and should be appealed. NVLSP may be able to represent you on an appeal, at no cost to you. Please visit <https://www.nvlsp.org/what-we-do/burn-pits-claims-assistance-program/> for more information about NVLSP's Burn Pits Claims Assistance Program, or to apply for this program.

If the VA regional office denial was dated **before** August 10, 2022, but less than one year ago, our advice is to request a **Higher Level Review (HLR)**. Be sure that VA receives your HLR request within one year of the date of the VA regional office denial. There are two reasons we advise filing an HLR request, rather than a Notice of Disagreement or supplemental claim: (1) an HLR request is likely to result in a much quicker decision than would a Notice of Disagreement, and (2) if the instructions below are followed, the HLR officer is more likely to grant your claim and assign you an effective date before August 10, 2022 than the VA Regional Offices, which review supplemental claims.

The form for an HLR is the [VA Form 20-0996](#). You can file an HLR in one of a few ways:

- **By mail**, by mailing the VA Form 20-0996 to:
Department of Veterans Affairs
Claims Intake Center
PO Box 4444
Janesville, WI 53547-4444
- **Online**, at <https://www.va.gov/decision-reviews/higher-level-review/request-higher-level-review-form-20-0996/start>
- **In Person**, by bringing the VA Form 20-0996 in person to your local regional office (RO), which you can find here: <https://www.va.gov/find-locations/?facilityType=benefits>.

You can't submit any new evidence with an HLR, but you can submit an argument with it. We recommend that in Box 19A of VA Form 20-0996, you write "Service Connection on a direct basis for [write the name of all the medical conditions on page 3 of this guide for which you applied]." In Box 19A, also write "see additional statement submitted with this form." Then, submit a separate sheet of paper with your full name and VA claim number at the top, followed by the statement below:

I was exposed to burn pits at *[List the name of each military base where you served and which had a burn pit]*. VA Training Letter 10-03 states that many toxins were emitted from these burn pits, many of which have been shown to be associated with various cancers and respiratory conditions. I disagree with the VA decision on my claim because the evidence shows it is at least as likely as not that I developed my claimed condition as a result of exposure to the toxins from burn pits named in the VA Training Letter. Therefore, I am entitled to service connection for the claimed conditions on a direct basis with an effective date based on the date VA received my earliest claim, even without the benefit of the new presumption of service connection now in effect. If the evidence of record is not sufficient to grant service connection on a direct basis, I request that my claim be returned for a new medical opinion on the connection

between my conditions and my service, in order to comply with the duty to assist. In the alternative, if you do not grant the relief I have requested (that is, service connection on a direct basis or remanding for a medical nexus opinion), then please grant me presumptive service connection with an effective date of August 10, 2022.

Next steps once you receive the VA decision made on your HLR request.

In deciding your HLR, the VA might (1) deny you service connection for your medical condition, or (2) grant you presumptive service connection with an effective date of August 10, 2022.

If the result of your HLR is a denial of service connection for any of the medical conditions listed on page 3 of this guide, it is likely that your claim was wrongly denied and should be appealed to the Board of Veterans' Appeals by filing a Notice of Disagreement. NVLSP may be able to represent you on an appeal to the Board, at no cost to you. Please visit <https://www.nvlsp.org/what-we-do/burn-pits-claims-assistance-program/> for more information about NVLSP's Burn Pits Claims Assistance Program, or to apply for this program.

If the result of your HLR is a grant of service connection with an effective date of August 10, 2022, you could simply accept the decision, or try to obtain an effective date earlier than August 10, 2022. If you wish to obtain advice on whether and how to pursue an earlier effective date, NVLSP may be able to advise you. Please visit <https://www.nvlsp.org/what-we-do/burn-pits-claims-assistance-program/> for more information about NVLSP's Burn Pits Claims Assistance Program, or to apply for this program.

How can I check the status of my claim at the VA?

You can check the status of your claim in a couple of ways. The easiest way is by using the online portal at VA.gov (<https://www.va.gov/claim-or-appeal-status/>). You can also call the VA directly at 1-800-827-1000, or email them through the Ask VA portal at <https://ask.va.gov/>. We do *not* recommend writing a letter to the VA to ask about the status of your claim, as the VA tends not to answer them.

About The National Veterans Legal Services Program (NVLSP)

The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit veterans service organization that has served active duty military personnel and veterans since 1981. NVLSP strives to ensure that our nation honors its commitment to its 22 million veterans and active duty personnel by ensuring they have the benefits they have earned through their service to our country. NVLSP has represented veterans in lawsuits that compelled enforcement of the law where the VA or other military services denied benefits to veterans in violation of the law. NVLSP's success in these lawsuits has resulted in more than \$5.2 billion dollars being awarded in disability, death and medical benefits to hundreds of thousands of veterans and their survivors. NVLSP offers training for attorneys and other advocates; connects veterans and active duty personnel with pro bono legal help when seeking disability benefits; publishes the nation's definitive guide on veteran benefits; and represents and litigates for veterans and their families before the VA, military discharge review agencies and federal courts. For more information go to www.nvlsp.org.