

indication of the presence of a chronic *disability* attributable to an undiagnosed illness before awarding compensation. In the House of Representatives report on H.R. 4386, an earlier version of Persian Gulf legislation, the Committee on Veterans' Affairs stated its intention "that there must be some objective indication or showing of the disability which is observable by a person other than the veteran, or for which medical treatment has been sought." (House Report # 103-669, p. 7.) Similarly, at a September 14, 1994, hearing on the Senate Committee on Veterans' Affairs, Senator Rockefeller, then Chairman of the Committee, stated that in introducing S. 2330, an earlier Senate version of the legislation, it was his intention that compensation be paid in situations where a veteran "has symptoms that can be verified by objective tests that show that the [veteran] is not well." (S. Hrg. 103-829, p. 3.)

Ordinarily, an objective indication is established through medical findings, i.e., "signs" in the medical sense of evidence perceptible to an examining physician. However, we also will consider non-medical indications which can be independently observed or verified, such as time lost from work, evidence that a veteran has sought medical treatment for his or her symptoms, evidence affirming changes in the veteran's appearance, physical abilities, and mental or emotional attitude, etc. Lay statements from individuals who establish that they are able from personal experience to make their observations or statements will be considered as evidence when VA determines whether the veteran is suffering from an undiagnosed illness.

Two commenters suggested that where the previously undiagnosed illness of a veteran is subsequently diagnosed, compensation under § 3.317 should continue until a decision on eligibility under other statutory or regulatory provisions has been reached.

Once the illness in a particular case has been diagnosed and a veteran is no longer entitled to compensation under the provisions of § 3.317, the provisions of § 3.500(y) require termination of compensation as of the last day of the month in which 60 days following the final rating decision expires. However, VA will simultaneously begin consideration of potential entitlement under other statutory and regulatory provisions and will initiate any required development for additional evidence. Although the 60-day period of § 3.500(y) is fixed in accordance with the requirements of 38 CFR 3.105(d) and (e), those sections of the regulations also

provide for a 60-day predetermination period prior to final rating action in order to safeguard a veteran's due process rights. We believe that a decision on entitlement under other provisions can be made prior to termination or reduction under § 3.500(y).

While the possibility remains that some awards under § 3.317 might be terminated prior to a final determination of entitlement under other provisions, we have no authority to pay compensation in the absence of an actual determination of entitlement. However, if payment is terminated but entitlement is subsequently established on another basis, payments may be made retroactive to the date compensation under the provisions of § 3.317 was terminated.

One commenter recommended that this regulation state that if scientific research eventually establishes that the signs and symptoms of Persian Gulf veterans with undiagnosed illnesses constitute a syndrome which can be attributed to service in the Persian Gulf, the provisions of 38 CFR 3.303(d) will provide a basis for establishing service connection for this syndrome.

VA does not agree. Section 3.303(d) provides that, notwithstanding statutory presumptive periods, service connection may be granted for a disease first diagnosed after discharge from service when all pertinent evidence establishes that the disease was incurred in service. However, so long as medical and scientific research has not established that some or all Persian Gulf veterans with undiagnosed illnesses are in fact suffering from a recognizable disease process attributable to service in the Gulf, any regulatory assumption that research will, in fact, eventually support such a finding would be conjectural and premature.

One commenter remarked that VA, in establishing a presumptive period, seems not to have taken into account either credible scientific and medical evidence or pertinent circumstances regarding the experiences of Persian Gulf veterans and, thus, failed to meet statutory requirements of Public Law 103-446.

VA does not agree. Public Law 103-446 required VA to determine an appropriate presumptive period following a review of the credible scientific and medical evidence and the historical treatment afforded disabilities for which manifestation periods have been established, and taking into account other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War. Although many veterans began to develop unexplained

signs and symptoms of illness shortly after their return from the Persian Gulf, there is as yet little or no medical or scientific evidence definitively linking the illnesses with service in the Gulf, and the credible evidence available supports no conclusions regarding etiology or definition of these illnesses. The National Institutes of Health (NIH)-sponsored Technology Assessment Workshop on the Persian Gulf Experience and Health, held in April 1994, concluded that it was not possible to establish a single case definition for the illnesses of Persian Gulf veterans and that, in fact, more than one disease category might be present, with overlapping symptoms and causes. More recently, a report of the Medical Follow-up Agency of the Institute of Medicine (IOM), published in January of this year, endorsed the report of the NIH panel comprised of non-government experts and stated that "[t]he Gulf War illness phenomenon may prove to be a mixture of several illnesses, or may prove not to be associated with a specific exposure or disease." The IOM report further concluded that establishment of a case definition was "handicapped by the lack of any generally recognized pathognomonic physical signs or laboratory findings, and by uncertainty about whether a specific syndrome exists and, if it does exist, its prevalence among Gulf War veterans. The subjectivity of many of the complaints associated with the Gulf War illness creates serious problems for those seeking to investigate the validity and origins of the illness." (Health Consequences of Service During the Persian Gulf War: Initial Findings and Recommendations for Immediate Action, National Academy Press, 1995, p. 26.) Given this uncertainty of available scientific and medical evidence, we felt that a presumptive period could not be established on this basis, and we looked to the other 2 factors, historical treatment and pertinent circumstances, to determine an appropriate period.

For many years Congress has authorized a one-year presumptive period for various chronic diseases, many of which present signs and symptoms similar to those of the undiagnosed illnesses of Persian Gulf veterans (see 38 U.S.C. 1101(3) and 1112(a)). This historical treatment of chronic diseases might indicate that a one-year presumptive period would be warranted for the undiagnosed illnesses of Persian Gulf veterans. We felt, however, that a one-year presumptive period would not meet the particular needs of these veterans, because it was