

Pub. L. 102-83, §5(c)(1), substituted "1110" for "310".

§ 1112. Presumptions relating to certain diseases and disabilities

(a) For the purposes of section 1110 of this title, and subject to the provisions of section 1113 of this title, in the case of any veteran who served for ninety days or more during a period of war—

(1) a chronic disease becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service;

(2) a tropical disease, and the resultant disorders or disease originating because of therapy, administered in connection with such diseases, or as a preventative thereof, becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service, or at a time when standard or accepted treatises indicate that the incubation period thereof commenced during such service;

(3) active tuberculous disease developing a 10 percent degree of disability or more within three years from the date of separation from such service;

(4) multiple sclerosis developing a 10 percent degree of disability or more within seven years from the date of separation from such service;

(5) Hansen's disease developing a 10 percent degree of disability or more within three years from the date of separation from such service;

shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service.

(b)(1) For the purposes of section 1110 of this title and subject to the provisions of section 1113 of this title, in the case of a veteran who is a former prisoner of war—

(A) a disease specified in paragraph (2) which became manifest to a degree of 10 percent or more after active military, naval, or air 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; and

(B) if the veteran was detained or interned as a prisoner of war for not less than thirty days, a disease specified in paragraph (3) which became manifest to a degree of 10 percent or more after active military, naval, or air 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.

(2) The diseases specified in this paragraph are the following:

(A) Psychosis.

(B) Any of the anxiety states.

(C) Dysthymic disorder (or depressive neurosis).

(D) Organic residuals of frostbite, if the Secretary determines that the veteran was detained or interned in climatic conditions consistent with the occurrence of frostbite.

(E) Post-traumatic osteoarthritis.

(F) Osteoporosis, if the Secretary determines that the veteran has post-traumatic stress disorder (PTSD).

(3) The diseases specified in this paragraph are the following:

(A) Avitaminosis.

(B) Beriberi (including beriberi heart disease).

(C) Chronic dysentery.

(D) Helminthiasis.

(E) Malnutrition (including optic atrophy associated with malnutrition).

(F) Pellagra.

(G) Any other nutritional deficiency.

(H) Cirrhosis of the liver.

(I) Peripheral neuropathy except where directly related to infectious causes.

(J) Irritable bowel syndrome.

(K) Peptic ulcer disease.

(L) Atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure and arrhythmia).

(M) Stroke and its complications.

(c)(1) For the purposes of section 1110 of this title, and subject to the provisions of section 1113 of this title, a disease specified in paragraph (2) of this subsection becoming manifest in a radiation-exposed veteran shall be considered to have been incurred in or aggravated during active military, naval, or air service, notwithstanding that there is no record of evidence of such disease during a period of such service.

(2) The diseases referred to in paragraph (1) of this subsection are the following:

(A) Leukemia (other than chronic lymphocytic leukemia).

(B) Cancer of the thyroid.

(C) Cancer of the breast.

(D) Cancer of the pharynx.

(E) Cancer of the esophagus.

(F) Cancer of the stomach.

(G) Cancer of the small intestine.

(H) Cancer of the pancreas.

(I) Multiple myeloma.

(J) Lymphomas (except Hodgkin's disease).

(K) Cancer of the bile ducts.

(L) Cancer of the gall bladder.

(M) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).

(N) Cancer of the salivary gland.

(O) Cancer of the urinary tract.

(P) Bronchiolo-alveolar carcinoma.

(Q) Cancer of the bone.

(R) Cancer of the brain.

(S) Cancer of the colon.

(T) Cancer of the lung.

(U) Cancer of the ovary.

(3) For the purposes of this subsection:

(A) The term "radiation-exposed veteran" means (i) a veteran who, while serving on active duty, participated in a radiation-risk activity, or (ii) an individual who, while a member of a reserve component of the Armed Forces, participated in a radiation-risk activity during a period of active duty for training or inactive duty training.

(B) The term "radiation-risk activity" means any of the following:

(i) Onsite participation in a test involving the atmospheric detonation of a nuclear device (without regard to whether the nation

conducting the test was the United States or another nation).

(ii) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

(iii) Internment as prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which (as determined by the Secretary) resulted in an opportunity for exposure to ionizing radiation comparable to that of veterans described in clause (ii) of this subparagraph.

(iv) Service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l(14)).

(4) A radiation-exposed veteran who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of compensation to which that veteran is entitled by reason of paragraph (1), but there shall be deducted from payment of such compensation the amount of the payment under that Act.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1120, §312; Pub. L. 86-187, Aug. 25, 1959, 73 Stat. 418; Pub. L. 86-188, Aug. 25, 1959, 73 Stat. 418; Pub. L. 87-645, §3, Sept. 7, 1962, 76 Stat. 442; Pub. L. 91-376, §3(a), (b), Aug. 12, 1970, 84 Stat. 788, 789; Pub. L. 97-37, §4(a), Aug. 14, 1981, 95 Stat. 936; Pub. L. 98-223, title I, §§101(c), 111, Mar. 2, 1984, 98 Stat. 38, 40; Pub. L. 99-576, title I, §108(a), Oct. 28, 1986, 100 Stat. 3252; Pub. L. 100-321, §2(a), May 20, 1988, 102 Stat. 485; Pub. L. 100-322, title III, §312, May 20, 1988, 102 Stat. 534; renumbered §1112 and amended Pub. L. 102-83, §§4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-86, title I, §§104(a), 105, Aug. 14, 1991, 105 Stat. 415; Pub. L. 102-578, §2(a), Oct. 30, 1992, 106 Stat. 4774; Pub. L. 103-446, title V, §501(a), Nov. 2, 1994, 108 Stat. 4663; Pub. L. 106-117, title V, §503, Nov. 30, 1999, 113 Stat. 1575; Pub. L. 108-183, title II, §201, Dec. 16, 2003, 117 Stat. 2656; Pub. L. 108-454, title III, §§302(a), 306(a), (b), Dec. 10, 2004, 118 Stat. 3610, 3612; Pub. L. 109-233, title IV, §401, June 15, 2006, 120 Stat. 407; Pub. L. 110-389, title I, §106, Oct. 10, 2008, 122 Stat. 4149.)

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsec. (c)(4), is Pub. L. 101-426, Oct. 15, 1990, 104 Stat. 920, as amended, which is set out as a note under section 2210 of Title 42, The Public Health and Welfare.

AMENDMENTS

2008—Subsec. (b)(2)(F). Pub. L. 110-389 added subpar. (F).

2006—Subsec. (b)(3)(L), (M). Pub. L. 109-233 added subpars. (L) and (M).

2004—Subsec. (c)(2)(Q) to (U). Pub. L. 108-454, §306(a), added subpars. (Q) to (U).

Subsec. (c)(3)(B)(iv). Pub. L. 108-454, §306(b), added cl. (iv).

Subsec. (c)(4). Pub. L. 108-454, §302(a), added par. (4).

2003—Subsec. (b). Pub. L. 108-183 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as fol-

lows: "For the purposes of section 1110 of this title and subject to the provisions of section 1113 of this title, in the case of a veteran who is a former prisoner of war and who was detained or interned for not less than thirty days, the disease of—

- "(1) avitaminosis,
- "(2) beriberi (including beriberi heart disease),
- "(3) chronic dysentery,
- "(4) helminthiasis,
- "(5) malnutrition (including optic atrophy associated with malnutrition),
- "(6) pellagra,
- "(7) any other nutritional deficiency,
- "(8) psychosis,
- "(9) any of the anxiety states,
- "(10) dysthymic disorder (or depressive neurosis),
- "(11) organic residuals of frostbite, if the Secretary determines that the veteran was interned in climatic conditions consistent with the occurrence of frostbite,
- "(12) post-traumatic osteoarthritis,
- "(13) peripheral neuropathy except where directly related to infectious causes,
- "(14) irritable bowel syndrome, or
- "(15) peptic ulcer disease,

which became manifest to a degree of 10 percent or more after active military, naval, or air 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."

1999—Subsec. (c)(2)(P). Pub. L. 106-117 added subpar. (P).

1994—Subsec. (c)(3)(B)(i). Pub. L. 103-446 inserted before period at end "(without regard to whether the nation conducting the test was the United States or another nation)".

1992—Subsec. (c)(1). Pub. L. 102-578, §2(a)(1), struck out "to a degree of 10 percent or more within the presumption period (as specified in paragraph (3) of this subsection)" after "radiation-exposed veteran".

Subsec. (c)(2)(N), (O). Pub. L. 102-578, §2(a)(2), added subpars. (N) and (O).

Subsec. (c)(3), (4). Pub. L. 102-578, §2(a)(3), (4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: "The presumption period for purposes of paragraph (1) of this subsection is the 40-year period beginning on the last date on which the veteran participated in a radiation-risk activity."

1991—Pub. L. 102-83, §5(a), renumbered section 312 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted "1110" for "310" and "1113" for "313" in introductory provisions.

Subsec. (b). Pub. L. 102-83, §5(c)(1), substituted "1110" for "310" and "1113" for "313" in introductory provisions.

Subsec. (b)(11). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (c)(1). Pub. L. 102-86, §105(1), amended subsec. (c)(1) of this section as in effect before the redesignations made by Pub. L. 102-83, §5, by substituting "during active military, naval, or air service" for "during the veteran's service on active duty" and "during a period" for "during the period".

Pub. L. 102-83, §5(c)(1), substituted "1110" for "310" and "1113" for "313".

Subsec. (c)(3). Pub. L. 102-86, §104(a), amended subsec. (c)(3) of this section as in effect before the redesignations made by Pub. L. 102-83, §5, by striking out before period at end ", except that such period shall be the 30-year period beginning on that date in the case of leukemia (other than chronic lymphocytic leukemia)".

Subsec. (c)(4)(A). Pub. L. 102-86, §105(2), amended subsec. (c)(4)(A) of this section as in effect before the redesignations made by Pub. L. 102-83, §5, by inserting "(i)" after "means" and adding cl. (ii).

Subsec. (c)(4)(B)(iii). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

1988—Subsec. (b)(13) to (15). Pub. L. 100-322 added pars. (13) to (15).

Subsec. (c). Pub. L. 100-321 added subsec. (c).
1986—Subsec. (b)(11), (12). Pub. L. 99-576 added pars. (11) and (12).

1984—Subsec. (a)(1) to (5). Pub. L. 98-223, §101(c), substituted “percent” for “per centum”.

Subsec. (b). Pub. L. 98-223, §111, added par. (10).

Pub. L. 98-223, §101(c), substituted “percent” for “per centum” in provision following par. (10).

1981—Subsecs. (b), (c). Pub. L. 97-37, §4(a)(1), (2), re-designated subsec. (c) as (b) and generally revised structure so as to include anxiety states as a listed disease, and exclude the enumerated armed conflicts and resulting treatment incurred. Former subsec. (b), relating to treatment as a prisoner of war as deemed in violation of the Geneva Conventions of 1929 and 1949, was struck out.

1970—Pub. L. 91-376 inserted reference to disabilities in section catchline, designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

1962—Pub. L. 87-645 substituted “seven years” for “three years” in par. (4).

1959—Pub. L. 86-188 inserted par. (5).

Pub. L. 86-187 substituted “three years” for “two years” in par. (4).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-454, title III, §302(c), Dec. 10, 2004, 118 Stat. 3610, provided that: “Paragraph (4) of section 1112(c) of title 38, United States Code, as added by subsection (a), shall take effect with respect to compensation payments for months beginning after March 26, 2002. Subsection (c) of section 1310 of such title, as added by subsection (b), shall take effect with respect to dependency and indemnity compensation payments for months beginning after March 26, 2002.”

Pub. L. 108-454, title III, §306(c), Dec. 10, 2004, 118 Stat. 3612, provided that: “The amendments made by this section [amending this section] shall take effect as of March 26, 2002.”

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-578, §2(b), Oct. 30, 1992, 106 Stat. 4774, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1992.”

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-86, title I, §104(b), Aug. 14, 1991, 105 Stat. 415, provided that: “No benefit may be paid by reason of the amendment made by subsection (a) [amending this section] for any period before the date of the enactment of this Act [Aug. 14, 1991].”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-321, §2(b), May 20, 1988, 102 Stat. 486, provided that: “Subsection (c) of section 312 [now 1112] of title 38, United States Code, as added by subsection (a), shall take effect on May 1, 1988.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-576, title I, §108(b), Oct. 28, 1986, 100 Stat. 3252, provided that: “The amendments made by subsection (a) [amending this section] shall take effect as of October 1, 1986.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 101(c) of Pub. L. 98-223 effective Apr. 1, 1984, see section 107 of Pub. L. 98-223, set out as a note under section 1114 of this title.

Pub. L. 98-223, title I, §114, Mar. 2, 1984, 98 Stat. 40, provided that: “The amendments made by this part [part B (§§111-114) of title I of Pub. L. 98-223, amending this section and sections 314 and 3011 [now 1114 and 5111] of this title] shall take effect as of October 1, 1983.”

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-37, §4(b), Aug. 14, 1981, 95 Stat. 936, provided that: “The amendments made by subsection (a)

[amending this section] shall take effect on October 1, 1981.”

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-645, §4, Sept. 7, 1962, 76 Stat. 442, provided that: “This Act [amending this section and sections 314 and 3203 [now 1114 and 5503] of this title and enacting provisions set out as a note under section 1114 of this title] shall take effect on the first day of the first calendar month which begins after the date of enactment of this Act [Sept. 7, 1962] but no payments shall be made by reason of this Act for any period before such effective date. The increased rate of compensation payable to any veteran entitled thereto on such first day shall be further increased, for such month only, in an amount equal to three times the monthly increase provided for such veteran by the amendments made by this Act.”

§ 1113. Presumptions rebuttable

(a) Where there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases or disabilities within the purview of section 1112, 1116, 1117, or 1118 of this title, has been suffered between the date of separation from service and the onset of any such diseases or disabilities, or the disability is due to the veteran's own willful misconduct, service-connection pursuant to section 1112, 1116, or 1118 of this title, or payments of compensation pursuant to section 1117 of this title, will not be in order.

(b) Nothing in section 1112, 1116, 1117, or 1118 of this title, subsection (a) of this section, or section 5 of Public Law 98-542 (38 U.S.C. 1154 note) shall be construed to prevent the granting of service-connection for any disease or disorder otherwise shown by sound judgment to have been incurred in or aggravated by active military, naval, or air service.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1120, §313; Pub. L. 102-4, §2(b), Feb. 6, 1991, 105 Stat. 13; renumbered §1113 and amended Pub. L. 102-83, §5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-446, title I, §106(b), title V, §501(b)(1), Nov. 2, 1994, 108 Stat. 4651, 4663; Pub. L. 105-277, div. C, title XVI, §1602(b), Oct. 21, 1998, 112 Stat. 2681-744.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277 substituted “1117, or 1118” for “or 1117” and “, 1116, or 1118” for “or 1116”.

Subsec. (b). Pub. L. 105-277, §1602(b)(1), substituted “1117, or 1118” for “or 1117”.

1994—Subsec. (a). Pub. L. 103-446, §106(b), inserted “or disabilities” after “diseases” in two places, substituted “purview of section 1112, 1116, or 1117” for “purview of section 1112 or 1116”, and inserted “, or payments of compensation pursuant to section 1117 of this title,” before “will not”.

Subsec. (b). Pub. L. 103-446, §501(b)(1), substituted “title,” for “title or” and inserted “, or section 5 of Public Law 98-542 (38 U.S.C. 1154 note)” after “of this section”.

Pub. L. 103-446, §106(b)(1), substituted “section 1112, 1116, or 1117” for “section 1112 or 1116”.

1991—Pub. L. 102-83, §5(a), renumbered section 313 of this title as this section.

Pub. L. 102-83, §5(c)(1), substituted “1112 or 1116” for “312 or 316” wherever appearing.

Pub. L. 102-4 inserted “or 316” after “section 312” wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-446, title V, §501(b)(2), Nov. 2, 1994, 108 Stat. 4663, provided that: “The amendments made by