



NVLSP
NATIONAL VETERANS LEGAL SERVICES PROGRAM

Self-Help Guide for Filing an Initial VA Claim for Disability Benefits for Burn Pit-Related Conditions

Updated: October 2023

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 October 2023.

© Copyright NVLSP 2023. These materials are the property of NVLSP and are made available at no charge. For parties interested in using or distributing these materials, please note that no alterations are permitted and proper attribution must be given to NVLSP.

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

Who is this guide for?

This self-help guide describes how to apply to the Department of Veterans Affairs (VA) for **service-connected disability compensation for one or more medical conditions that may be associated with exposure to burn pits fumes and smoke – but only if the veteran did not previously file a claim for service-connected disability compensation for those same medical conditions.**

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.

If you apply for service connection for a medical condition you believe is related to exposure to burn pits fumes and the VA denies your claim, or if your condition is not one that has a presumption of service connection, you can apply for NVLSP to represent 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, and how to apply for NVLSP representation.

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

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

Fortunately, for some medical conditions, proving service connection is easy, because the condition qualifies for **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 medical conditions qualify for presumptive service connection?

In August 2022, the Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act of 2022 became law. The law made many 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
- 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.

What if my condition is not in the list above?

You can still prove that you are entitled to disability compensation even if your condition does not qualify for presumptive service connection. To win a claim for service connection for a condition not on the list of presumptive service connected conditions, the evidence must usually show that it is **as least as likely as not** that:

- You have a **current** physical or mental disability; *and*
- There was an event (like exposure to toxins from burn pits), injury, or disease that occurred during service that may have led to the current disability; *and*
- It is at least as likely as not that the current disability resulted from the in-service event, injury, or disease.

See the “Tips for Filing Your Claim” section beginning on page 5 for more advice on how to prove each of these elements.

How do I file a claim for VA disability compensation?

Step 1 (optional): File an Intent to File a Claim

Before you submit a detailed claim for disability compensation, you can let VA know you plan to file, using a simple **intent to file a claim** form. There are four ways to file your intent to file a claim:

- **Electronically** – Through VA.gov. The VA.gov portal can be found at <https://www.va.gov/disability/file-disability-claim-form-21-526ez/introduction>
- **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.

You do not have to submit an intent to file a claim. However, filing one can maximize the amount of money you receive. If you file your formal claim application within **one year** of the date the VA receives your intent to file, the VA will use the date of the intent to file as the **effective date** for an award of benefits on your claim. That means that, if VA grants your claim for benefits, it will back date that grant all the way to the date it received your intent to file, and you will get a lump sum of all the money you should have been receiving from that time until the day your claim was granted.

Submitting an intent to file takes only a few minutes, **so it's a good option if you need some time to gather the evidence you need for your claim.** Keep in mind that VA calculates your effective date based on when it *receives* your intent to file, not when you send it.

Step 2: File an Initial Claim Application

When you are ready to file your formal claim for benefits, you will need to submit it using an official VA form. If you have never filed a claim for benefits for the particular medical condition you want service connected, you should submit an **initial claim**. To file an **initial claim**, use [VA Form 21-526EZ](#). (Note: If you want to file a disability claim for a condition that is presumptively service connected under the PACT Act, but you were previously denied service connection by the VA for that same medical condition before the PACT Act went into effect in August 2022, then you should not use this guide; instead, you should use NVLSP's separate self-help guide for filing a new disability claim due to exposure to burn pits in cases in which VA previously denied you service connection for the same medical condition).

You can file your VA Form 21-526EZ 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/>

Tips for Filing Your Claim

In addition to these tips, we **strongly encourage** you to read the instructions included by VA with the VA's forms.

VA's Duty to Assist

The VA has a **duty to assist** with your claim. This means VA must help you gather the evidence you need to prove your condition is service connected. If you are filing an initial claim, and you do not have all the evidence that might help prove your claim, you can tell VA to try to develop or get the evidence for you. To do that, just check the "Standard Claims Process" box in Question 1 of the VA Form 21-526EZ. You should also submit a [VA Form 21-4142](#) and [VA Form 21-4142a](#) if you have any non-VA medical records you want the VA to try to obtain and add to your claim file before it makes a decision. The VA will contact you if it isn't able to obtain these records, usually by sending you a letter in the mail.

Evidence You'll Need

If your condition is presumptively service-connected, and you have a qualifying period of service, the only evidence you need is that you have the disability that qualifies for presumptive service connection. Pages 2-3 of this guide discuss some of the conditions that are presumptively service-connected under the PACT Act, but these are not the only presumptions that exist under VA regulations. A more complete list of presumptions and their associated periods/locations of service can be found here: <https://www.benefits.va.gov/BENEFITS/factsheets/serviceconnected/presumption.pdf>. NVLSP strongly encourages veterans to check this list to see if their condition falls under any VA presumptions other than the ones discussed on pages 2-3 of this guide.

As noted above, **if your condition is not presumptively service connected, you need to show it is at least as likely as not** that you have a **current** condition and that there's a "nexus" (or connection) between that condition and your service. In other words, you have to show that your condition was **caused or aggravated** by something in service. The best way to do that is with an opinion from a doctor or other medical professional. We strongly encourage you to get this opinion from a private doctor and submit it with your application if you can. The opinion should say that it is **at least as likely as not** that your condition or conditions resulted from your exposure to fumes from burn pits (or some other event or exposure in service). It's very important that the medical opinion also explain all of the **reasons** your doctor believes the two to be connected.

While not required, you can also ask a private, non-VA doctor to fill out a Disability Benefits Questionnaire (DBQ) for you to submit with your claim. 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 VA grants service connection, what disability rating percentage to give you. You can find a list of DBQs here: https://www.benefits.va.gov/compensation/dbq_publicdbqs.asp.

If you cannot get an opinion from a private doctor, the VA should ask one of its own medical professionals to give an opinion on your claim. But there is no guarantee the VA examiner will agree that your condition is related to your burn pit exposure or any other aspect of your service. Once again,

medical opinions are only required if your condition is **not** one of the conditions that is presumptively connected to your service.

Specifying Your Conditions

You should put all the conditions that you think are related to your service in Question 16 of your [VA Form 21-526EZ](#). Make sure to list your conditions in general terms instead of only putting the specific diagnoses. For example, instead of saying you have “sinusitis,” say you have “a respiratory condition, including sinusitis.”

In Question 16, under the column “Explain How the Disability(ies) Relates to the In-Service Event/Exposure/Injury,” write: “Related to burn pits, see attached.” Then, attach a separate statement to the form with your full name at the top and a short statement about why you believe you are entitled to disability compensation. We recommend you include the following:

I was exposed to burn pits at [List the name of each military base where you served and which had a burn pit]. Please grant my disability claim for the conditions that VA has presumptively service-connected due to exposure to burn pits.

with regard to the other medical conditions named in my answer to Question 16, VA Training Letter 10-03 states that many toxins were emitted from burn pits. My claim is that it is at least as likely as not that I developed these other diseases as a result of exposure to the toxins from burn pits named in the VA Training Letter.

What happens after I file?

The VA will reach out to you to ask if you want to send any more evidence to the VA. If you do not respond to them within 30 days, the VA can start to decide your claim based on the evidence it already has plus any evidence it gets or develops. So, **it’s important to send them any evidence they ask for as quickly as possible.**

The VA might also ask you to report for a VA medical exam if it thinks you need one for them to decide your claim. It is important you show up for these exams. If you don’t, the claim will be decided based on the evidence VA already has.

The VA takes, on average, about four months to fully process an initial claim and make an initial decision. But the amount of time it actually takes depends on the type of claim filed, the number and type of injuries or disabilities claimed, and how long it takes the VA to get all the evidence needed to decide your claim.

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 respond to these letters.

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 \$5.4 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.