

### § 3.370

#### RATING CONSIDERATIONS RELATIVE TO SPECIFIC DISEASES

#### § 3.370 Pulmonary tuberculosis shown by X-ray in active service.

(a) *Active disease.* X-ray evidence alone may be adequate for grant of direct service connection for pulmonary tuberculosis. When under consideration, all available service department films and subsequent films will be secured and read by specialists at designated stations who should have a current examination report and X-ray. Resulting interpretations of service films will be accorded the same consideration for service-connection purposes as if clinically established, however, a compensable rating will not be assigned prior to establishment of an active condition by approved methods.

(b) *Inactive disease.* Where the veteran was examined at time of entrance into active service but X-ray was not made, or if made, is not available and there was no notation or other evidence of active or inactive reinfection type pulmonary tuberculosis existing prior to such entrance, it will be assumed that the condition occurred during service and direct service connection will be in order for inactive pulmonary tuberculosis shown by X-ray evidence during service in the manner prescribed in paragraph (a) of this section, unless lesions are first shown so soon after entry on active service as to compel the conclusion, on the basis of sound medical principles, that they existed prior to entry on active service.

(c) *Primary lesions.* Healed primary type tuberculosis shown at the time of entrance into active service will not be taken as evidence to rebut direct or presumptive service connection for active reinfection type pulmonary tuberculosis.

[26 FR 1591, Feb. 24, 1961, as amended at 43 FR 45347, Oct. 2, 1978]

#### § 3.371 Presumptive service connection for tuberculous disease; wartime and service on or after January 1, 1947.

(a) *Pulmonary tuberculosis.* (1) Evidence of activity on comparative study of X-ray films showing pulmonary tuberculosis within the 3-year presumptive period provided by § 3.307(a)(3) will

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be taken as establishing service connection for active pulmonary tuberculosis subsequently diagnosed by approved methods but service connection and evaluation may be assigned only from the date of such diagnosis or other evidence of clinical activity.

(2) A notation of inactive tuberculosis of the reinfection type at induction or enlistment definitely prevents the grant of service connection under § 3.307 for active tuberculosis, regardless of the fact that it was shown within the appropriate presumptive period.

(b) *Pleurisy with effusion without obvious cause.* Pleurisy with effusion with evidence of diagnostic studies ruling out obvious nontuberculous causes will qualify as active tuberculosis. The requirements for presumptive service connection will be the same as those for tuberculous pleurisy.

(c) *Tuberculous pleurisy and endobronchial tuberculosis.* Tuberculous pleurisy and endobronchial tuberculosis fall within the category of pulmonary tuberculosis for the purpose of service connection on a presumptive basis. Either will be held incurred in service when initially manifested within 36 months after the veteran's separation from service as determined under § 3.307(a)(2).

(d) *Miliary tuberculosis.* Service connection for miliary tuberculosis involving the lungs is to be determined in the same manner as for other active pulmonary tuberculosis.

[26 FR 1591, Feb. 24, 1961, as amended at 27 FR 6387, July 6, 1962; 31 FR 4681, Mar. 19, 1966; 39 FR 34532, Sept. 26, 1974; 43 FR 45347, Oct. 2, 1978; 54 FR 34981, Aug. 23, 1989]

#### § 3.372 Initial grant following inactivity of tuberculosis.

When service connection is granted initially on an original or reopened claim for pulmonary or nonpulmonary tuberculosis and there is satisfactory evidence that the condition was active previously but is now inactive (arrested), it will be presumed that the disease continued to be active for 1 year after the last date of established activity, provided there is no evidence to establish activity or inactivity in the intervening period. For a veteran entitled to receive compensation on August 19, 1968, the beginning date of

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graduated ratings will commence at the end of the 1-year period. For a veteran who was not receiving or entitled to receive compensation on August 19, 1968, ratings will be assigned in accordance with the Schedule for Rating Disabilities (part 4 of this chapter). This section is not applicable to running award cases.

[33 FR 16275, Nov. 6, 1968]

### § 3.373 [Reserved]

#### § 3.374 Effect of diagnosis of active tuberculosis.

(a) *Service diagnosis.* Service department diagnosis of active pulmonary tuberculosis will be accepted unless a board of medical examiners, Clinic Director or Chief, Outpatient Service certifies, after considering all the evidence, including the favoring or opposing tuberculosis and activity, that such diagnosis was incorrect. Doubtful cases may be referred to the Chief Medical Director in Central Office.

(b) *Department of Veterans Affairs diagnosis.* Diagnosis of active pulmonary tuberculosis by the medical authorities of the Department of Veterans Affairs as the result of examination, observation, or treatment will be accepted for rating purposes. Reference to the Clinic Director or Chief, Outpatient Service, will be in order in questionable cases and, if necessary, to the Chief Medical Director in Central Office.

(c) *Private physician's diagnosis.* Diagnosis of active pulmonary tuberculosis by private physicians on the basis of their examination, observation or treatment will not be accepted to show the disease was initially manifested after discharge from active service unless confirmed by acceptable clinical, X-ray or laboratory studies, or by findings of active tuberculosis based upon acceptable hospital observation or treatment.

[26 FR 1591, Feb. 24, 1961, as amended at 27 FR 6387, July 6, 1962; 33 FR 16275, Nov. 6, 1968; 43 FR 45348, Oct. 2, 1978]

#### § 3.375 Determination of inactivity (complete arrest) in tuberculosis.

(a) *Pulmonary tuberculosis.* A veteran shown to have had pulmonary tuberculosis will be held to have reached a

condition of "complete arrest" when a diagnosis of inactive is made.

(b) *Nonpulmonary disease.* Determination of complete arrest of nonpulmonary tuberculosis requires absence of evidence of activity for 6 months. If there are two or more foci of such tuberculosis, one of which is active, the condition will not be considered to be inactive until the tuberculous process has reached arrest in its entirety.

(c) *Arrest following surgery.* Where there has been surgical excision of the lesion or organ, the date of complete arrest will be the date of discharge from the hospital, or 6 months from the date of excision, whichever is later.

[33 FR 16275, Nov. 6, 1968, as amended at 43 FR 45348, Oct. 2, 1978]

### §§ 3.376–3.377 [Reserved]

#### § 3.378 Changes from activity in pulmonary tuberculosis pension cases.

A permanent and total disability rating in effect during hospitalization will not be discontinued before hospital discharge on the basis of a change in classification from active. At hospital discharge, the permanent and total rating will be discontinued unless (a) the medical evidence does not support a finding of complete arrest (§ 3.375), or (b) where complete arrest is shown but the medical authorities recommend that employment not be resumed or be resumed only for short hours (not more than 4 hours a day for a 5-day week). If either of the two aforementioned conditions is met, discontinuance will be deferred pending examination in 6 months. Although complete arrest may be established upon that examination, the permanent and total rating may be extended for a further period of 6 months provided the veteran's employment is limited to short hours as recommended by the medical authorities (not more than 4 hours a day for a 5-day week). Similar extensions may be granted under the same conditions at the end of 12 and 18 months periods. At the expiration of 24 months after hospitalization, the case will be considered under § 3.321(b) if continued short hours of employment is recommended or if other evidence warrants submission.

[43 FR 45348, Oct. 2, 1978]