

The PACT Act Provides VA Disability Benefits to Burn Pit Victims with Certain Illnesses by Establishing Conditions for Presumptive Exposure

By First Lieutenant Tara Nath, USMCR²

11.0 – Veterans’ Claims

I. INTRODUCTION

Burn pits are large areas where the military incinerates waste generated by military operations. This waste includes plastics, rubber, chemicals, petroleum products, munitions, medical and human waste, and more.³ These burn pits have been used for decades in areas like Iraq, Kuwait, Qatar, United Arab Emirates, Saudi Arabia, and Bahrain.⁴

It is estimated that over 3.5 million service members have been exposed to these burn pits while serving overseas.⁵ Exposure to burn pit smoke can and does lead to various health concerns, both short and long term. Some short-term effects include nausea, headaches, irritation of the eyes, respiratory tract, nose, and throat.⁶ The long-term effects of burn pit exposure are far more serious and include types of cancers, asthma, COPD, rhinitis, and more.⁷

¹ We invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2,000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

² Tara, a life member of ROA, is a First Lieutenant in the Marine Corps. Tara holds a B.S. in Business Administration with a second major in Public Policy from the University of North Carolina at Chapel Hill. She graduated cum laude from the University of Pittsburgh School of Law in May 2022 and sat for the Texas bar exam in July. After passing the bar exam, she will go on active duty in the Marine Corps. Military title is used for identification only. The views expressed in this article are the views of the author, and not necessarily the views of the Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. Government.

³ *Issue Brief: Burn Pit Exposure*, DAV, <https://www.dav.org/wp-content/uploads/Burn-Pit-Exposure-2020.pdf> (last visited Aug. 22, 2022).

⁴ *Id.*

⁵ Leo Shane III, *For first time, some burn pit victims will get presumptive status for disability benefits*, MILITARY TIMES: VETERAN (Aug. 2, 2021), <https://www.militarytimes.com/veterans/2021/08/02/for-first-time-some-burn-pit-victims-will-get-presumptive-status-for-disability-benefits/>.

⁶ War Related Illness & Injury Study Center, *Burn Pits (Trash and Human Waste Exposure)*, U.S. DEPARTMENT OF VETERANS AFFAIRS, <https://www.warrelatedillness.va.gov/education/factsheets/burn-pits.pdf> (last updated Nov. 2013).

⁷ The PACT Act and your VA benefits, U.S. DEPARTMENT OF VETERANS AFFAIRS, <https://www.va.gov/resources/the-pact-act-and-your-va-benefits/> (last visited Aug. 22, 2022).

Veterans who were exposed to these burn pits previously had to file claims and prove a direct service connection to their illness. This was a heavy burden on the veteran because they had to show (1) medical evidence of a current disability; (2) evidence of burn pit exposure; and (3) evidence of a nexus between the burn pit exposure and the disability.⁸ In 2019, the VA contracted with the National Academy of Medicine to conduct a study on the health effects of burn pit exposure.⁹ This eventually led to the VA creating limited presumptions of service connection for some respiratory conditions related to burn pit exposure for certain veterans.¹⁰ Once these presumptions were in place, veterans with qualifying conditions did not have to prove the direct service connection for their qualifying illnesses.¹¹

However, as First Lieutenant Lauren Walker noted in her Law Review article on the subject, this development still left millions of veterans, whose conditions were not included in the presumptions, without their well-earned disability benefits through the VA.¹²

Congress finally recognized this major gap in coverage and passed the Honoring our PACT Act of 2022, also known as the PACT Act. The Act was signed into law on August 10, 2022 by President Joe Biden.

II. DOES THE PACT ACT APPLY TO ME?

The PACT Act expands VA healthcare benefits for veterans and their dependents exposed to burn pits and other toxic substances.¹³ In order to determine if your illness is covered, there are three primary considerations: 1) what conditions you suffer from; 2) when you served; and 3) where you served.¹⁴ If you were assigned to a duty station in any of the specified countries and have any of the specified illnesses, the VA will automatically assume (or “presume”) that illness was caused by your service.¹⁵ These are referred to as “presumptive conditions.” If you have a presumptive condition, you must only meet the service requirements and are not required to prove that your service caused the condition.¹⁶

a. PRESUMPTIVE CONDITIONS FOR BURN PIT VICTIMS

The PACT Act added more than 20 presumptive conditions that benefit Gulf War era and post 9/11 Veterans. If you suffer from any of these conditions, you have met one of the conditions required for receiving benefits under the PACT Act.

⁸ *Issue Brief: Burn Pit Exposure*, *supra* note 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Lauren Walker, *The VA will begin Processing Disability Claims for Post-9/11 Burn Pit Vets*, ROA Law Review 21061 (Oct. 2021) (discussing burn pits and the VA’s initial steps in establishing presumptive disability benefits for veterans exposed to the toxins of burn pits).

¹³ *The Pact ACT and Your Benefits*, *supra* note 7.

¹⁴ Honoring our PACT Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759.

¹⁵ *Id.*

¹⁶ *Id.*

*The following cancers are now presumptive:*¹⁷

- Brain cancer
- Gastrointestinal cancer of any type
- Glioblastoma
- Head cancer of any type
- Kidney cancer
- Lymphatic cancer of any type
- Neck cancer of any type
- Pancreatic cancer
- Reproductive cancer of any type
- Lymphoma of any type
- Melanoma
- Respiratory (breathing-related) cancer of any type

*Additionally, the following illnesses are also now presumptive:*¹⁸

- Asthma that was diagnosed after service
- Chronic bronchitis
- Pleuritis
- Pulmonary fibrosis
- Chronic rhinitis
- Chronic sinusitis
- Sarcoidosis
- Emphysema
- Granulomatous disease
- Interstitial lung disease (ILD)
- Constrictive bronchiolitis
- Chronic obstructive pulmonary disease (COPD)
- Obliterative bronchiolitis

b. PRESUMPTION OF EXPOSURE BASED ON WHEN AND WHERE YOU SERVED

The VA will also look at where you served and the time periods you were serving. If you were assigned a duty station in any of the following locations during the designated time periods, the VA will presume that you were exposed to burn pit toxins.¹⁹

*If you assigned to a duty station on or after August 2, 1990 in the following locations:*²⁰

- Bahrain
- Iraq
- Kuwait
- Oman
- Qatar
- Saudi Arabia

¹⁷ *Id.* at 1784.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 1787.

- Somalia
- The United Arab Emirates (UAE)
- The airspace above any of these locations

*If you were assigned to a duty station on or after September 11, 2001 in any of the following locations:*²¹

- Afghanistan
- Djibouti
- Egypt
- Jordan
- Lebanon
- Syria
- Uzbekistan
- Yemen
- The airspace above any of these locations

If you 1) suffer from any of the presumptive conditions AND 2) were assigned a duty station in one of the presumptive exposure locations, the PACT ACT applies to you.

III. THE PACT ACT APPLIES TO ME, NOW WHAT?

If the PACT Act applies to your situation, that means that you are entitled to disability benefits for the covered illness.²² If you have a pending claim for a condition that is now presumptive, you do not need to do anything; the VA will consider your condition to be presumptive.²³ If your disability claim was previously denied and your condition is now considered presumptive you can submit a Supplemental Claim and the VA will review your claim again.²⁴ Additionally, if you are a surviving family member of a Veteran whose death was attributed to one of these presumed illnesses, you may also be entitled to survivor benefits.²⁵

In order to claim the benefits to which you are entitled, you must file for disability compensation with VA Form 21-526EZ. You can do this by logging in to your VA account online or calling the VA directly at 800-698-2411 (TTY: 711). If your disability claim was previously denied, you should fill out the Supplemental Claim Form (VA Form 20-0995). All of these forms can be found at <https://www.va.gov/resources/the-pact-act-and-your-va-benefits/#getting-benefits>.

As of the publishing of this article, the VA has stated that they will start to process PACT Act related benefits in January of 2023. If you apply for benefits any time in the next year and your application is approved, your compensation will be backdated to August 10, 2022. This means

²¹ *Id.* at 1787-88.

²² *Id.*

²³ *The Pact ACT and Your Benefits*, *supra* note 7.

²⁴ Honoring our PACT ACT § 204.

²⁵ *Id.* at 1771.

you will receive the amount you would have received from August 10, 2022 to the date the VA grants your application.²⁶

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1 Constitution Ave. NE
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²⁶ *The Pact ACT and Your Benefits*, *supra* note 7.

²⁷ Congress recently established the United States Space Force as the 8th uniformed service.

²⁸ You can also contribute on-line at www.roa.org.