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On appeal from the
Department of Veterans Affairs Regional Office in Waco, Texas

THE ISSUE

Entitlement to service connection for Hodgkin's disease, claimed as due to in-service herbicide exposure.

REPRESENTATION

Appellant represented by: Katrina J. Eagle, Attorney

WITNESS AT HEARING ON APPEAL

Appellant

ATTORNEY FOR THE BOARD

M. Zawadzki, Counsel

INTRODUCTION

The Veteran served on active duty from July 1970 to July 1992.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a June 2008 rating decision issued by the Department of Veterans Affairs (VA) Regional Office (RO) in Waco, Texas in which the RO, in pertinent part, denied service connection for Hodgkin's disease.

In March 2013, the Veteran testified before the undersigned Veterans Law Judge at the RO; a transcript of the hearing has been associated with the Virtual VA e-folder. The e-folder does not include any additional relevant documents.

Subsequent to issuance of the most recent supplemental statement of the case (SSOC), the Veteran submitted additional evidence in support of his claim. This evidence was accompanied by a waiver of RO consideration. See 38 C.F.R. § 20.1304 (2013).

FINDINGS OF FACT

1. Resolving all reasonable doubt in his favor, the Veteran was exposed to herbicides during service.
2. The Veteran was diagnosed with Hodgkin's disease in May 2007.

CONCLUSION OF LAW

The Veteran's Hodgkin's disease is presumed to have been incurred in active military service. 38 U.S.C.A. §§ 1110, 1131, 1116, 5107A, 5107 (West 2002 & Supp. 2013); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2013).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

Duty to Notify and Assist

The Veterans Claims Assistance Act of 2000 (VCAA) describes VA's duty to notify and assist claimants in substantiating a claim for VA benefits. 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5107, 5126 (West 2002 & Supp. 2013); 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a) (2013). The United States Court of Appeals for Veterans Claims (Court), in *Dingess/Hartman v. Nicholson*, 19 Vet. App. 473 (2006), has held that the VCAA notice requirements apply to all elements of a claim.

Given the favorable disposition of the claim on appeal, the Board finds that all notification and development actions needed to fairly adjudicate this claim have been accomplished.

Analysis

The Veteran asserts that his Hodgkin's disease is related to herbicide exposure during service, specifically, his service at Andersen Air Force Base in Guam from December 1972 to May 1973.

If a veteran was exposed to an herbicide agent (to include Agent Orange) during active military, naval, or air service, certain diseases shall be service-connected if the requirements of 38 C.F.R. § 3.307(a)(6) are met, even if there is no record of such disease during service, provided further that the rebuttable presumption provisions of 38 C.F.R. § 3.307(d) are also satisfied. 38 C.F.R. § 3.309(e). These diseases include Hodgkin's disease. 38 C.F.R. § 3.309(e). Thus, a presumption of service connection arises for a veteran with in-service herbicide exposure who develops Hodgkin's disease.

Veterans who served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975 shall be presumed to have been exposed to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. 38 U.S.C.A. § 1116(f); 38 C.F.R. § 3.307(a)(6)(iii). The Veteran in this case has not asserted, nor does the record indicate, that he served on land in the Republic of Vietnam. Accordingly, the presumption of herbicide exposure does not apply and actual, direct exposure to herbicides must be shown. See *Combee v. Brown*, 34 F. 3d 1039, 1042 (Fed. Cir. 1994).

The Veteran has repeatedly described exposure to Agent Orange on Andersen Air Force Base in Guam between December 1972 and May 1973. He has reported loading and unloading drums of Agent Orange from his truck, with leaking fluids sometimes getting on his person. He testified during the March 2013 hearing that the drums were generally black with an orange (or in some cases blue or silver) band around them. He stated that his superiors instructed him to pick up "drums of Agent Orange" from the Navy Base. He reported driving drums to the Uranao dumpsites where there was a small cliff over which he and fellow service members would push the drums off the back of the truck. The Veteran added that some drums were deteriorating; so the contents would splash on them. He reported dumping at these sites on approximately five occasions during his time in Guam, with about another five or ten trips to the Naval base to retrieve or deliver drums. During the hearing, the Veteran's attorney submitted a Board decision regarding another veteran, documenting that the veteran in that case reported transporting 55-gallon drums to Andersen Air Force Base, with several barrels of Agent Orange falling onto the road.

The RO attempted to verify the Veteran's reported in-service herbicide exposure, and made a request to the National Personnel Records Center (NPRC) for documents showing exposure to herbicides. In February 2008, the NPRC responded that there were no records of exposure to herbicides.

However, the Veteran has submitted a number of pieces of evidence in support of his assertion that he was exposed to herbicides during his service in Guam. The Veteran

provided an Environmental Protection Agency (EPA) December 2003 Superfund Record of Decision regarding Andersen Air Force Base. The Record of Decision states that, based on accounts by former Air Force personnel, wastes were dumped at the Uranao dumpsites; by being pushed over a cliff. The Record of Decision states that there were no documented accounts of waste disposal practices, duration, volume, or the types of disposed materials. Another EPA document regarding Andersen Air Force Base provided by the Veteran discusses numerous hazardous substances associated with the base and states that most soil contamination problems were either the result of nearby industrial activity or the result of material being placed into scattered dump sites. The report also discusses the Uranao dumpsite, located over a cliff line in the northwest portion of the base. According to the report, crashed aircraft were pushed off the runways over this cliff throughout the Vietnam War.

The Veteran submitted a Public Health Assessment from the Department of Health and Human Services Agency for Toxic Substances & Disease Registry (ATSDR) regarding Andersen Air Force Base. This assessment reports that base activities had resulted in numerous fuel, pesticide, and chemical spills, with contamination identified at several areas of the base.

The Veteran also provided a copy of a May 2003 letter from a congressman to the Secretary of Defense, from the internet, in which the congressman reported that a "Public Health Assessment" received by his staff indicated that dioxin levels had been detected in the soil at Andersen Air Force Base. The congressman added that he had received information from veterans who were stationed on Guam who reported the use of Agent Orange, Agent Blue, and Agent White during the Vietnam era. The report finding dioxin contamination in the soil at Andersen Air Force Base, provided by the congressman to the Secretary of Defense, is also mentioned in another internet article the Veteran submitted in support of his claim.

The Veteran has furnished photographs of sprayed vegetation on Guam and large drums at Andersen Air Force Base. The Veteran stated that, although these were not his photographs, they were typical photographs of Agent Orange and other "rainbow agents" stored and used on Guam. He provided an article, presumably obtained on the internet, entitled "Guam...The Land of the Rosaries" which discusses the presence of dioxin in Guam. Another document presumably printed from the internet reports that Guam was a storage area for Agent Orange during the Vietnam era. This article states that an environmental study and subsequent clean-up were later done at Andersen Air Force Base.

In a May 2010 letter, the Veteran's private physician, Dr. B.R., wrote that he was treating the Veteran for residuals of his Hodgkin's disease. The physician stated that the Veteran had shown him his Air Force service records, photographs showing that he was stationed at Andersen Air Force Base in Guam in 1972-1973, and documents stating that Agent Orange was used at Andersen Air Force Base at that time. Dr. B.R. opined that it was as likely as not that the Veteran's Hodgkin's disease is etiologically due to his exposure to Agent Orange while stationed at Andersen Air Force Base in Guam in 1972-1973.

A May 1973 Performance Report for the period from June 1972 through May 1973 confirms that the Veteran served on temporary duty at Andersen Air Force Base in Guam as a Vehicle Operator. His duties included operating general purpose vehicles; supervising the loading and off-loading of personnel and cargo; and performing operator maintenance as required.

The Board accepts the Veteran's assertions of driving, loading, and off-loading drums as credible and consistent with the circumstances of his service. See 38 U.S.C.A. § 1154(a).

The Board, having considered all the evidence of record, finds that the evidence is at least evenly balanced regarding the question of whether the Veteran was exposed to herbicides during service. In such a situation, the question is to be resolved in favor of the veteran. See *Gilbert v. Derwinski*, 1 Vet. App. 49, 53-54 (1990).

Accordingly, considering the totality of the evidence, in light of the Veteran's consistent and credible statements, and resolving all doubt in his favor, the Board accepts that the Veteran was exposed to herbicides during his service in Guam.

A May 2007 pathology report reflects that the Veteran was diagnosed with Hodgkin's disease. He subsequently underwent chemotherapy for this condition until December 2007. Given that Hodgkin's disease is a disease that is presumed related to herbicide exposure under 38 C.F.R. § 3.307 and 3.309, service connection is warranted on this basis. 38 U.S.C.A. § 5107(b).

ORDER

Service connection for Hodgkin's disease, claimed as due to in-service herbicide exposure, is granted, subject to the laws and regulations governing the award of monetary benefits.

JOHN Z. JONES
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs