

This appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c) (2015). 38 U.S.C.A. § 7107(a)(2) (West 2014).

FINDINGS OF FACT

1. An unappealed April 2007 rating decision declined to reopen a claim for service connection for Parkinson's Disease, to include as due to chemical exposure. The Veteran did not appeal that decision, and no new and material evidence was received by VA within the applicable appeal period.
2. Evidence received since the final April 2007 rating action relates to an unestablished fact necessary to substantiate the claim for service connection for Parkinson's Disease and raises a reasonable possibility of substantiating the claim.
3. Parkinson's Disease is the result of exposure from environmental toxins during in-service duties as an aerospace ground equipment repairman while stationed at Andersen Air Force Base on the island of Guam.

CONCLUSIONS OF LAW

1. The April 2007 rating decision that declined to reopen a previously denied claim for Parkinson's Disease, is final. 38 U.S.C.A. § 7105 (West 2014); 38 C.F.R. § 20.1103 (2015).
2. New and material evidence has been received since the April 2007 rating action, to reopen a denied claim for service connection for Parkinson's Disease. 38 U.S.C.A. §§ 5108, 7105 (West 2014), 38 C.F.R. § 3.156 (2015).
3. Resolving reasonable doubt in the Veteran's favor, the criteria for service connection for Parkinson's Disease, as secondary to exposure to environmental toxins, have been met. 38 U.S.C.A. §§ 1110, 1112, 1113, 1116, 1131, 1137, 5103, 5103A, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.159, 3.303, 3.307, 3.309 (2015).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran seeks to reopen a previously denied claim for service connection for Parkinson's Disease, to include as due to exposure to herbicides or environmental toxins.

An April 2007 rating decision declined to reopen a previously denied claim for service connection for Parkinson's Disease. The RO determined that there was no evidence of any in-service treatment for Parkinson's Disease or post-service evidence relating Parkinson's Disease to service, to include exposure to herbicides or other chemicals. The Veteran did not appeal the April 2007 rating action, nor did he submit any new and material evidence within one year following that decision. 38 C.F.R. § 3.156(b) (2015). The Board notes that within a year of the April 2007 rating action, VA received an August 2007 article titled, "Veteran Seeks Agent Orange Probe," that discussed a retired airman's Congressional inquiry into the use of herbicides at Andersen Air Force Base, Guam for the period from 1960 to 1970. The Board also received a copy of an October 2005 Board decision of another Veteran. In that decision, the Board had awarded service connection for diabetes mellitus secondary to exposure to toxic herbicides during active service at Andersen Air Force Base, Guam. As the newly received article, as well as the October 2005 Board decision, discussed the use of chemicals at Andersen Air Force Base, Guam, they are duplicative of previous articles and studies of record at the time of the April 2007 rating decision, and are, therefore, not new and material. Thus, the April 2007 rating decision became final one year later in April 2008. 38 U.S.C.A. §§ 7104, 7105 (West 2014).

The Board finds that new and material evidence has been received and the claim for service connection for Parkinson's Disease is reopened.

A finally decided claim may be reopened if the claimant presents new and material evidence with respect to a claim which has been previously denied and which is final. 38 U.S.C.A. § 5108; 38 C.F.R. § 3.156. If the claim is so reopened, it will be reviewed on a de novo basis. 38 U.S.C.A. §§ 5108, 7105 (West 2014); *Evans v. Brown*, 9 Vet. App. 273 (1996); *Manio v. Derwinski*, 1 Vet. App. 140 (1991).

New evidence means existing evidence not previously submitted to agency decision makers. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim. 38 C.F.R. § 3.156(a) (2015). New and material evidence is not required as to each previously unproven element of a claim. *Shade v. Shinseki*, 24 Vet. App. 110 (2010).

For the purpose of establishing whether new and material evidence has been submitted, the credibility of the new evidence, although not its weight, is presumed. *Justus v. Principi*, 3 Vet. App. 510 (1992). The presumption of credibility is rebuttable when the evidentiary assertion is inherently incredible or when the fact asserted is beyond the competence of the person making the assertion. *King v. Brown*, 5 Vet. App. 19, 21 (1993).

Evidence submitted since the final April 2007 rating decision includes, but is not limited to, April 2015 and January 2016 opinions, prepared by M. O., M. D. and A. N, M. D.. That evidence is new as it was not of record at the time of the final April 2007 rating decision. Those opinions are also material because they relate to an unestablished fact necessary to substantiate the underlying claim for service connection for Parkinson's Disease, namely evidence relating to the onset of the disorder, to include his exposure to environmental toxics, such as perchloroethylene (PCE) and trichloroethylene (TCE) during active military service at Andersen Air Force Base, Guam. On review, the Board finds that evidence to be new and material. 38 C.F.R. § 3.156(a) (2015); *Shade v. Shinseki*, 24 Vet. App. 110 (2010); *Justus v. Principi*, 3 Vet. App. 510 (1992). Thus, the claim for service connection for Parkinson's Disease, to include as due to exposure to herbicides and environmental toxins is reopened.

The Veteran seeks service connection for Parkinson's Disease, to include as secondary to exposure to Agent Orange and environmental toxins.

Service connection may be granted for disability arising from disease or injury incurred in or aggravated by active service. 38 U.S.C.A. §§ 1110, 1131 (West 2014); 38 C.F.R. § 3.303(a) (2015).

Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d) (2015). As a general matter, service connection for a disability requires evidence of: (1) the existence of a current disability; (2) the existence of the disease or injury in service, and; (3) a relationship or nexus between the current disability and any injury or disease during service. *Shedden v. Principi*, 381 F.3d 1163 (Fed. Cir. 2004); *Hickson v. West*, 12 Vet. App. 247 (1999); *Caluza v. Brown*, 7 Vet. App. 498 (1995)

In this case, Parkinson's Disease is not a chronic disease listed under 38 C.F.R. § 3.309(a). Therefore, the presumptive service connection provisions based on chronic in-service symptoms and continuous post-service symptoms under 38 C.F.R. § 3.303(b) do not apply to this claim. *Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2013). As the instant decision grants service connection for Parkinson's Disease on a direct basis, the Board need not consider whether the Veteran is entitled to service connection on a presumptive basis.

A Veteran who had active service in the Republic of Vietnam during the period beginning on January 9, 1962 and ending on May 7, 1975 will be presumed to have been exposed to an herbicide agent during such service 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) (West 2014); 38 C.F.R. § 3.307(a)(6)(iii) (2015). If a Veteran was exposed to an herbicide agent during active service, certain diseases, to include Parkinson's Disease, shall be service-connected if the requirements of 38 C.F.R. § 3.307(a)(6) are met, even though 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) (2015). The disease must have become manifest to a degree of 10 percent or more at any time after service. 38 C.F.R. § 3.307(a)(6)(ii) (2015).

VA has extended the presumption of service connection for diseases listed under 38 C.F.R. § 3.309(e), such as Parkinson's Disease, to Veterans who served in Korea in or near the demilitarized zone (DMZ) between April 1, 1968, and August 31, 1971, or in Thailand at certain designated bases and whose duties placed him on or near the perimeter of the base, where herbicides were sprayed. The presumption of service connection for diseases exposed to an herbicide agent under 38 C.F.R. § 3.309(e) has not been extended to claims based on service on the island of Guam.

If a Veteran did not serve in the Republic of Vietnam during the Vietnam era or in Korea in or near the DMZ between April 1, 1968, and August 31, 1971, or in Thailand and certain designated bases and with duties in close proximity to the perimeter of the base, then exposure is not presumed; and actual exposure to herbicides must be verified through appropriate service department or other sources in order for the presumption of service connection for a herbicide-related disease under 38 C.F.R. § 3.309(e) to be applicable. VA Adjudication Procedure Manual, M21-1MR, Part IV, Subpart ii, Chapter 2, Section C, paragraph 10(p).

Notwithstanding the foregoing presumption provisions for herbicide exposure, a claimant is not precluded from establishing service connection with proof of direct causation. *Combee v. Brown*, 34 F.3d 1039 (Fed. Cir. 1994).

Here, the evidence does not show that the Veteran served in the Republic of Vietnam, Korea, or Thailand, nor does he contend otherwise. Thus, he is not entitled to a presumption of service connection for his Parkinson's Disease as a disability resulting from herbicide exposure. 38 C.F.R. § 3.309(e) (2015). The Veteran may be entitled to service connection for Parkinson's Disease on a direct basis if the evidence establishes that it is related to service, to include exposure to herbicides or environmental toxins.

The Veteran contends, in written statements and in hearing testimony, that he has Parkinson's Disease as a result of exposure to herbicides and environmental toxins, such as TCE and PCE, as a result of having served as an aerospace ground equipment repairman during active duty with the United States Air Force at Andersen Air Force Base, Guam. He maintains that he was exposed to toxic chemicals from working on airplanes and spraying the surrounding grounds. The Veteran contends that after service, he was employed as a stevedore and teacher. During the course of employment as a stevedore, he maintains that he was exposed to chemicals similar to those in Guam.

Initially, the Board finds that the Veteran is currently diagnosed with Parkinson's Disease. Numerous private medical records throughout the appeal show that the Veteran receives treatment for Parkinson's Disease.

Next, the Board finds that the Veteran was exposed to environmental toxins while stationed at Andersen Air Force Base in Guam. The Veteran's military personnel records, to include his service separation form, show that he served as an aerospace ground equipment repairman while stationed on Guam from September 23, 1968, to January 22, 1970. During the April 2015 and January 2016 hearings, the Veteran credibly testified that his duties as an aerospace ground equipment repairman required him to spray the airplanes and surrounding grounds with toxic chemicals. In addition, throughout the appeal, the Veteran has submitted numerous articles and studies indicating that various toxic solvents may have been stored or used on Guam. Notably, an article from the Environmental Protection Agency (EPA) listed Andersen Air Force Base, Guam as a toxic site with dioxin contaminated soil and ordered cleanup of the site. Considering that evidence, particularly the article showing that the EPA has detected dioxin contaminated soil, and the Veteran's hearing

testimony which is credible, the Board accepts that he was exposed to environmental toxins, such as PCE and TCE, during active service in Guam.

VA received medical opinions, dated in April 2015 and January 2016, prepared by M. O., M. D. and A. N., M. D, which are supportive of the claim. In the April 2015 report, Dr M. O. concluded that "Pesticide Exposure" had been linked to Parkinson's Disease and that there was a good (better than 50 percent chance) that it had affected the Veteran. The Board finds Dr. M. O.'s opinion to be of reduced probative value in evaluating the Veteran's claim because there is no indication that he had reviewed the Veteran's service records, nor did he provide the exact pesticides, aside from listing Agent Orange, that had been linked to the development of Parkinson's Disease or any rationale for the opinion. In the January 2016 report, Dr. A. N. specifically noted that she had been treating the Veteran for Parkinson's Disease since 2008. Dr. A. N. indicated that the Veteran had been exposed to environmental toxins, such as TCE and PCE, during service as an ground equipment repairman in Guam. Dr. A. N. indicated that reports had associated Parkinson's Disease with those toxins. Thus, it was Dr. A. N.'s opinion that the Veteran's Parkinson's Disease was directly caused by exposure, in part, to TCE and PCE, with a greater than 50 percent probability while in active duty.

Recognition is given to the fact that the opinion from Dr. A. N. did not provide any rationale. There are other means by which a physician can become aware of critical medical facts, notably by treating the claimant for an extended period of time, such as in the case of Dr. A. N.'s long-term treatment of the Veteran since 2008. Nieves-Rodriguez v. Peake, 22 Vet. App. 295 (2008). There is also no other evidence in the record that weighs against Dr. A. N.'s positive opinion. An October 2015 VA examiner provided an opinion that was against a nexus between the Veteran's Parkinson's Disease and his exposure to herbicides without a discussion on the relationship between Parkinson's Disease and environmental toxins, such as PCE and TCE, which is the basis of the Board's award for Parkinson's Disease herein.

Thus, although Dr. A. N.'s opinion is of diminished value given its lack of rationale, it nevertheless places the weight of the evidence in the Veteran's favor, and at least places the evidence in equipoise. Accordingly, the Board finds that the evidence shows that it is at least as likely as not that Parkinson's Disease is due to exposure to environmental toxins during service. Therefore, service connection for Parkinson's Disease as secondary to exposure to environmental toxins is granted. 38 U.S.C.A. § 5107(b) (West 2002); Gilbert v. Derwinski, 1 Vet. App. 49 (1990).

ORDER

Service connection for Parkinson's Disease, secondary to environmental toxins, is granted.

HARVEY P. ROBERTS
Veterans Law Judge
Board of Veterans' Appeals

BARBARA B. COPELAND
Veterans Law Judge
Board of Veterans' Appeals

MATTHEW W. BLACKWELDER
Veterans Law Judge
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