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On appeal from the

Department of Veterans Affairs Regional Office in St. Louis, Missouri

THE ISSUES

1. Entitlement to service connection for diabetes mellitus type 2 (diabetes), to include as due to herbicides exposure.

2. Entitlement to service connection for a heart disability, to include as due to herbicides exposure and diabetes.

3. Entitlement to service connection for hypertension, to include as due to diabetes.

4. Entitlement to service connection for peripheral neuropathy of the right upper extremity, to include as due to diabetes.

5. Entitlement to service connection for peripheral neuropathy of the left upper extremity, to include as due to diabetes.

6. Entitlement to service connection for peripheral neuropathy of the right lower extremity, to include as due to diabetes.

7. Entitlement to service connection for peripheral neuropathy of the left lower extremity, to include as due to diabetes.

REPRESENTATION

Appellant (Veteran) represented by: Katrina J. Eagle, Attorney

WITNESSES AT HEARING ON APPEAL

Veteran and Msgt L.G.F., USAF, Ret.

ATTORNEY FOR THE BOARD

Christopher McEntee, Counsel

INTRODUCTION

The Veteran had active service from October 1968 to October 1972.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from an April 2010 rating decision by the Department of Veterans Affairs (VA) Regional Office (RO) in St. Louis, Missouri. In March 2013, the Veteran testified before the undersigned Veterans Law Judge at a hearing convened at the RO. A copy of the transcript has been included in the record.

The record in this matter consists of paper and electronic claims files. Relevant documentary evidence has been added to the record since the August 2012 Supplemental Statement of the Case (SSOC) and has been considered pursuant to the Veteran's March 2013 waiver of initial Agency of Original Jurisdiction (AOJ) review of the evidence. 38 C.F.R. §§ 19.31, 20.1304 (2013).

The Board will decide below each of the claims on appeal except the claim to service connection for hypertension. That claim is addressed in the REMAND section of the decision below and is REMANDED to the AOJ.

FINDINGS OF FACT

1. The evidence is in equipoise on the issue of whether the Veteran incurred diabetes during active service.

2. The evidence is in equipoise on the issue of whether the Veteran's heart disability relates to his diabetes.

3. The evidence is in equipoise on the issue of whether the Veteran's right upper extremity peripheral neuropathy relates to his diabetes.

4. The evidence is in equipoise on the issue of whether the Veteran's left upper extremity peripheral neuropathy relates to his diabetes.

5. The evidence is in equipoise on the issue of whether the Veteran's right lower extremity peripheral neuropathy relates to his diabetes.

6. The evidence is in equipoise on the issue of whether the Veteran's left lower extremity peripheral neuropathy relates to his diabetes.

CONCLUSIONS OF LAW

1. The criteria for service connection for diabetes have been met. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2013).

2. The criteria for service connection for a heart disability have been met. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2013).

3. The criteria for service connection for peripheral neuropathy in the right upper extremity have been met. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2013).

4. The criteria for service connection for peripheral neuropathy in the left upper extremity have been met. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2013).

5. The criteria for service connection for peripheral neuropathy in the right lower extremity have been met. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2013).

6. The criteria for service connection for peripheral neuropathy in the left lower extremity have been met. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2013).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran claims that he incurred diabetes and a heart disorder during service as the result of exposure to herbicides while stationed at Andersen Air Force Base (AFB) in Guam during the Vietnam Conflict. He also claims that the heart disorder, and peripheral neuropathy in each extremity, is due to his diabetes.

Service connection for VA compensation purposes will be granted for a disability resulting from disease or personal injury incurred in the line of duty or for aggravation of a preexisting injury in the active military, naval or air service. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. § 3.303(a) (2013).

Generally, in order to establish service connection, there must be (1) medical evidence of a current disability; (2) medical, or in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and (3) medical evidence of a nexus between the claimed in-service disease or injury and the current disability. See Hickson v. West, 12 Vet. App. 247, 253 (1999).

Service connection may be established on a secondary basis for a disability that is proximately due to or the result of a service-connected disease or injury. 38 C.F.R. § 3.310(a). See Harder v. Brown, 5 Vet. App. 183, 187 (1993). Additional disability resulting from the aggravation of a nonservice-connected condition by a service-connected condition is also compensable under 38 C.F.R. § 3.310(a). See Allen v. Brown, 7 Vet. App. 439, 448 (1995).

When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant. 38 U.S.C.A. § 5107; 38 C.F.R. § 3.102; Gilbert v. Derwinski, 1 Vet. App. 49, 53 (1990).

In this matter, the evidence of record demonstrates that the Veteran has been diagnosed during the appeal period with diabetes, cardiomyopathy, and peripheral neuropathy in each extremity. These diagnoses are noted in VA treatment records dated in March 2009, and in private medical evidence dated between 2007 and 2009. The first element of Hickson is therefore established.

Regarding the second Hickson element, the Board finds the evidence of record in equipoise on whether the Veteran was exposed to herbicides during active service.

On the one hand, extensive research by the RO yielded no affirmative evidence documenting the in-service exposure in Guam the Veteran claims. The RO sought information on this issue from the U.S. Army and Joint Services Records Research Center (JSRRC). In a January 2010 memorandum of record, JSRRC indicated research into the Veteran's allegation, and concluded

that "historical information does not document the spraying, testing, or storage" of herbicides at Andersen AFB in Guam.

On the other hand, detailed statements and testimony of record from the Veteran and from a fellow service member indicate the presence on Andersen AFB of herbicides during the Veteran's time there. The Veteran stated that, while working as a fuel specialist in Guam in the early 1970s, he came in contact with herbicides. The DD Form 214 of record indicates that the Veteran's military occupational specialty was as a fuel specialist. He indicated that herbicides were used there to clear brush away from his base, and particularly away from the fuel lines on which he worked. He indicated that, for refueling purposes, the fuel lines extended from the island's interior to the port and to the flight line. The Veteran indicated that his job was to secure the fuel lines and maintain them by treating leaks caused by corrosion. He indicated that extensive vegetation contributed to the corrosion. He asserted that vegetation was cleared from the fuel lines by spraying herbicides near the pipelines. He stated that he knew the liquids frequently sprayed on base contained herbicides because the aim of the spraying was to eliminate vegetation from the area of the fuel lines. He further stated that he handled barrels which likely contained herbicides. The Veteran's claims are supported by Msgt L.G.F., USAF, Ret., who testified at the Veteran's Board hearing, and who submitted a statement into the record corroborating the Veteran's account. Msgt L.G.F. indicated that he also served as a fuel specialist on Guam. He indicated that he was the actual person who was tasked with reducing the amount of vegetation and "jungle overgrowth" to prevent rusting and corrosion of the fuel lines. He testified that he frequently sprayed herbicides on the island to achieve his goal of clearing vegetation from the pipeline areas, and that he was often "soaked in it."

In assessing evidence, the Board is tasked with determining its competency and credibility. Indeed, the determination of credibility is a finding of fact to be made by the Board in the first instance. Caluza v. Brown, 7 Vet. App. 478, 511 (1995). In assessing credibility of evidence, the Board may consider internal inconsistency, facial plausibility, consistency with other evidence submitted, bad character, bias, self-interest, malingering, and desire for monetary gain. Id. In assessing credibility, the Board may also consider the Veteran's demeanor when testifying before the Board at a hearing. Dalton v. Nicholson, 21 Vet. App. 23, 38 (2007). After determining the competency and credibility of evidence, the Board, as fact finder, must then weigh its probative value. See Madden v. Brown, 125 F.3d 1447 (Fed Cir. 1997) (the Board has the "authority to discount the weight and probative value of evidence in light of its inherent characteristics in its relationship to other items of evidence").

In this matter, the Board finds the testimony offered at the March 2013 Board hearing to be both competent and credible. The evidence is competent because it is offered by two specialists in the field of fuel management. Their testimony regarding the ways in which fuel lines were maintained in Guam in the early 1970s is of probative value. The testimony is credible as well. The Veteran has been consistent in his statements regarding the ways in which he believes he was exposed to herbicides during service. His assertions are plausible, moreover, given the time during which he served - during the Vietnam Conflict - and given the nature of the tropical terrain around which he worked. And testimony from the service member who actually sprayed the herbicides only serves to strengthen the credibility of the testimony. Furthermore, objective evidence of record

corroborates their claims regarding contamination at Andersen AFB on Guam. The U.S. Environmental Protection Agency has designated the base a Superfund cleanup site due to the extensive contamination of its soil from various activities engaged in by air force personnel since the early 1940s. Finally, as the Veteran's representative noted at the Board hearing, the testimony of record must be compared with the absence of evidence indicating that herbicides were not used at Andersen AFB in the early 1970s. The JSRRC stated that there was no evidence of their usage, not that they were not used. Hence, in the vacuum of evidence from the government regarding herbicide usage in Guam, the Veteran's competent and credible evidence describing its usage is the only probative evidence of record addressing the issue of herbicide exposure during active service. With such an evidentiary background, the Board cannot find that a preponderance of the evidence is against the assertion of in-service herbicides exposure. As such, the second element of Hickson is established here.

Although the Board finds that the Veteran was exposed to some type of herbicide while in service, it must point out that presumptive service connection pursuant to 38 C.F.R. § 3.307 and § 3.309 is not warranted. Specifically, although the Veteran is competent to testify as to the use of vegetation killing sprays, he is not competent to testify as to the particular chemical compound of that spray. Section 3.307 specifically defines the type of herbicides required to trigger the presumptive service connection provisions. There is no evidence that the Veteran knew it was of the same type as that used in Vietnam. Therefore, presumptive service connection is not warranted. However, as explained below, direct service connection is established.

Direct service connection requires the third Hickson element - i.e., medical evidence of a nexus between the in-service exposure and the current diabetes. As to that element, the Board finds in favor of the Veteran as well. The only medical professional who commented on the Veteran's claim to medical nexus between diabetes and service offered a supportive opinion. In an October 2009 letter, a physician found it "as likely as not" that the Veteran's diabetes related to herbicides exposure during service. It is not clear from the letter if the commenting physician is a treating physician familiar with the Veteran's medical history. The physician did not indicate a review of the claims file. And the physician did not provide a detailed explanation for the basis of the supportive opinion. See Bloom v. West, 12 Vet. App. 185, 187 (1999) (a physician's statement is dependent, in part, upon the extent to which it reflects clinical data or other rationale to support the opinion). Nevertheless, it a clear medical opinion offered by a medical professional. And the record is devoid of medical commentary challenging the Veteran's theory of causation here. The supportive opinion therefore has some probative value that tends to favor the claim.

In sum, the Board cannot finds that a preponderance of the evidence of record demonstrates that the Veteran did not experience herbicides exposure during service, or that the in-service exposure is not causally related to the current diabetes. As such, this is an appropriate case in which to invoke VA's doctrine of reasonable doubt. 38 U.S.C.A. § 5107(b); 38 C.F.R. § 3.102. A finding of service connection is therefore warranted for diabetes.

Similarly, the Board will invoke VA's doctrine of reasonable doubt in finding service connection warranted for cardiomyopathy and peripheral neuropathy. Service connection on a secondary basis

is warranted for these disorders because the only medical evidence of record addressing the issues favors the Veteran's claims. In a July 2009 letter, a physician who treats the Veteran for his diabetes indicated that the Veteran's diabetes was "complicated by peripheral neuropathy." In an August 2009 letter, the Veteran's treating cardiologist stated that the Veteran's cardiomyopathy was "as likely as not" related to his diabetes. Again, the letters are not supported by detailed explanations. Nevertheless, it is of probative value that each is provided by a treating physician who is a specialist in the medical area commented upon. In any event, a preponderance of the evidence is not against the claims to secondary service connection. 38 U.S.C.A. § 5107(b); 38 C.F.R. § 3.102. Findings of service connection are therefore warranted for cardiomyopathy and peripheral neuropathy.

ORDER

Entitlement to service connection for diabetes is granted.

Entitlement to service connection for cardiomyopathy is granted.

Entitlement to service connection for peripheral neuropathy of the right upper extremity is granted.

Entitlement to service connection for peripheral neuropathy of the left upper extremity is granted.

Entitlement to service connection for peripheral neuropathy of the right lower extremity is granted.

Entitlement to service connection for peripheral neuropathy of the left lower extremity is granted.

(CONTINUED ON NEXT PAGE)

REMAND

The Board finds additional medical inquiry warranted into the claim to service connection for hypertension.

VA treatment records dated in March 2009 note a diagnosis of hypertension, as do private medical records dated in June 2008. The Veteran maintains that he developed this disorder as the result of a now service-connected disorder. As the record contains no medical commentary on this claim, he should be provided with a VA compensation examination.

The RO should also attempt to include in the claims file any outstanding VA treatment records. The most recent VA treatment records are dated in March 2009.

Further, the RO should attempt to include in the claims file any outstanding medical evidence pertaining to disability benefits the Veteran receives from the Social Security Administration (SSA). A July 2009 letter of record from SSA to the Veteran indicates that the Veteran has been receiving SSA disability benefits for several years. Golz v. Shinseki, 590 F.3d 1317, 1323 (Fed. Cir. 2010).

While the further delay of this case is regrettable, due process considerations require such action. Accordingly, the case is REMANDED for the following action:

1. Attempt to obtain and associate with the claims folder any outstanding VA treatment records. The most recent records are dated in March 2009. If no additional VA treatment records exist, the claims file should be documented accordingly. 38 C.F.R. § 3.159.

2. Attempt to obtain and associate with the claims folder any outstanding medical evidence pertaining to SSA disability benefits. If no additional VA treatment records exist, the claims file should be documented accordingly. 38 C.F.R. § 3.159.

3. Schedule the Veteran for an appropriate VA examination to determine the nature and etiology of his claimed hypertension. Any indicated tests should be accomplished. The examiner should review the claims folders prior to examination, to include any newly associated records obtained as a result of this remand.

The examiner is asked to comment on the following questions:

a. Has the Veteran had a diagnosable hypertension disorder at any time since April 2009 (the beginning of the appeal period)?

b. If the Veteran has had hypertension during the appeal period, is it at least as likely as not that the disorder is related to an in-service disease, event, or injury? Please note the Veteran's assertions that he was been exposed to herbicides during service, which the Board has found credible.

c. If the Veteran has had hypertension during the appeal period, is it at least as likely as not that the hypertension is due to or caused by the service-connected diabetes, cardiomyopathy, or peripheral neuropathy?

d. If the Veteran has had hypertension during the appeal period, is it at least as likely as not that the hypertension is aggravated by the service-connected diabetes, cardiomyopathy, or peripheral neuropathy?

By aggravation, the Board means a permanent increase in the severity of the underlying disability that is beyond its normal progression. If aggravation is found, the examiner should address the following medical issues: (1) the baseline manifestations of the disability found prior to aggravation; and (2) the increased manifestations which, in the examiner's opinion, are proximately due to service-connected disability. 38 C.F.R. § 3.310 (2013).

e. If the Veteran has had hypertension during the appeal period, is it at least as likely as not that the Veteran had chronic hypertension within one year of his October 1972 discharge from service?

The examiner is asked to explain the reasons behind any opinions expressed and conclusions reached. The examiner is reminded that the term "as likely as not" does not mean "within the realm of medical possibility," but rather that the evidence of record is so evenly divided that, in the examiner's expert opinion, it is as medically sound to find in favor of the proposition as it is to find against it.

4. Review the medical opinions obtained above to ensure that the remand directives have been accomplished. If the questions posed are not answered or sufficiently answered, return the case to the examiner for completion of the inquiry.

5. After all the above development has been completed, readjudicate the claim on appeal. If the issue remains denied, the Veteran should be provided with a SSOC, and afforded a reasonable period of time within which to respond thereto.

The Veteran has the right to submit additional evidence and argument on the matter the Board has remanded. Kutscherousky v. West, 12 Vet. App. 369 (1999).

This claim must be afforded expeditious treatment. The law requires that all claims that are remanded by the Board of Veterans' Appeals or by the United States Court of Appeals for Veterans Claims for additional development or other appropriate action must be handled in an expeditious manner. See 38 U.S.C.A. §§ 5109B, 7112 (West Supp. 2013).

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BETHANY L. BUCK

Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs