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On appeal from the
Department of Veterans Affairs Regional Office in Roanoke, Virginia

THE ISSUE

Entitlement to service connection for prostate cancer.

REPRESENTATION

Appellant represented by: Virginia Department of Veterans Services

ATTORNEY FOR THE BOARD

S. Grabia, Counsel

INTRODUCTION

The Veteran served on active duty from January 1942 to December 1945 and from October 1948 to January 1975.

This matter comes before the Board of Veterans' Appeals (Board) from a January 2012 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in Roanoke, Virginia.

In addition to the paper claims file, there is a Virtual VA paperless claims file associated with the Veteran's claim. A review of the documents in such file indicates that there is relevant information to the Veteran's current claims and such evidence has been considered accordingly.

Please note this appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c) (2012). 38 U.S.C.A. § 7107(a) (2) (West 2002).

FINDING OF FACT

The Veteran's diagnosed prostate cancer is presumed related to his exposure to herbicide agents while serving at Korat RTAFB, Thailand, from October 1967 to September 1968.

CONCLUSION OF LAW

Prostate cancer is presumed related to herbicide exposure resulting from active duty service in Thailand. 38 U.S.C.A. §§ 1110, 1112, 1113, 1116 (West 2002 & Supp. 2013); 38 C.F.R. §§ 3.159, 3.303, 3.307, 3.309 (2012).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

I. Veterans Claims Assistance Act of 2000 (VCAA)

As provided for by the VCAA, VA has a 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. 2012); 38 C.F.R. §§ 3.102, 3.159 and 3.326(a) (2011). In this case, the Board is granting in full the benefit sought on appeal. Accordingly, without deciding that any error was committed with respect to the duty to notify or the duty to assist, such error was harmless and need not be further considered.

II. Analysis

Service connection will be granted for a disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C.A. §§ 1110, 1131.

Additionally, a Veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era shall be presumed to have been exposed during such service 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. In such circumstances, service connection may be granted on a presumptive basis for the diseases listed in 38 C.F.R. § 3.309(e), including prostate cancer. 38 C.F.R. § 3.307(a) (6) (ii).

While all Veterans who served in the Republic of Vietnam during the Vietnam Era are presumed to have been exposed to an herbicide agent, here, the Veteran has reported service at Korat RTAFB in Thailand during the Vietnam era. See 38 U.S.C.A. § 1116(f); 38 C.F.R. § 3.307.

VA procedures for verifying exposure to herbicides in Thailand during the Vietnam Era are detailed in the VA Adjudication Manual, M21-1MR, Part IV, Subpart ii, Chapter 2, Section C ("M21-1MR"). VA has determined that there was significant use of herbicides

on the fenced-in perimeters of military bases in Thailand intended to eliminate vegetation and ground cover for base security purposes as evidenced in a declassified Vietnam era Department of Defense document titled "Project CHECO Southeast Asia Report: Base Defense in Thailand." Special consideration of herbicide exposure on a facts-found or direct basis should be extended to those Veterans whose duties placed them on or near the perimeters of Thailand military bases. This allows for presumptive service connection of the diseases associated with herbicide exposure.

The majority of troops in Thailand during the Vietnam Era were stationed at the Royal Thai Air Force Bases of U-Tapao, Ubon, Nakhon Phanom, Udorn, Takhli, Korat, and Don Muang. If a veteran served on one of these air bases as a security policeman, security patrol dog handler, member of a security police squadron, or otherwise served near the air base perimeter, as shown by MOS (military occupational specialty), performance evaluations, or other credible evidence, then herbicide exposure should be acknowledged on a facts-found or direct basis. However, this applies only during the Vietnam Era, from February 28, 1961, to May 7, 1975. See M21-1MR, Part IV, Subpart ii, Chapter 2, Section C.10. (q).

It is unclear whether the Veteran served in Vietnam. An August 2012, VA treatment note reports, without elaboration, that the Veteran did service in Vietnam. There is no other evidence of such service.

The same treatment note reports that the Veteran served on Korat RTAFB and that Agent Orange was stored there. The physician completing the note, concluded that it was more likely than not that the Veteran's prostate cancer was the result of military service.

VA has apparently made no effort to obtain additional information regarding the Veteran's herbicide exposure in service. Service treatment records confirm that he received treatment for unrelated conditions at Korat RTAFB from October 1967 through September 1968.

If the asserted herbicide exposure cannot be resolved based upon information in the Memorandum, and sufficient information was obtained, the RO should send an inquiry to the U. S. Army and Joint Services Records Research Center (JSRRC). See VA Adjudication Procedural Manual M21-1MR, Part IV, Subpart ii, Chapter 2, Section C, 10, q. The Veteran's STRs show that he served at Korat RTAFB as an Administrative NCO, which is not an MOS associated with service at air base perimeters as outlined in the Memorandum. The CHECO report notes; however, that commanders at Korat could use herbicides at their discretion on any location on the base, and not just on the perimeter.

The available evidence is in at least equipoise on the question of whether the Veteran was exposed to herbicides at Korat. The Veteran has a current diagnosis of prostate cancer, which was found during VA treatment in 2011. Also, service records, including service treatment records, place the Veteran at Korat RTAFB during the VA-designated

timeframe for which herbicide exposure in Thailand may be presumed.

The elements needed to establish service connection for prostate cancer have been demonstrated. Service connection for prostate cancer is thereby warranted.

ORDER

Entitlement for service connection for prostate cancer, claimed as due to herbicide exposure, is granted.

Mark D. Hindin
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs