



BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF

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DOCKET NO. 11-06 628

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DATE

DEC 23 2013

On appeal from the
Department of Veterans Affairs Regional Office in Winston-Salem, North Carolina

THE ISSUES

1. Entitlement to service connection for diabetes mellitus, type II.
2. Entitlement to service connection for peripheral neuropathy, claimed as secondary to diabetes mellitus, type II.

REPRESENTATION

Veteran represented by: Katrina Eagle, Attorney at Law

WITNESS AT HEARING ON APPEAL

The Veteran

ATTORNEY FOR THE BOARD

Sara Schinnerer, Counsel

INTRODUCTION

The Veteran had active service from January 1966 to June 1969.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from an August 2009 rating decision of the Department of Veterans Affairs (VA), Regional Office (RO) in Winston-Salem, North Carolina.

The Veteran testified at a hearing at the RO before the undersigned Veterans Law Judge in June 2012; a transcript of the hearing is associated with the claims file.

The record before the Board consists of the Veteran's paper claims file and an electronic file known as Virtual VA.

The peripheral neuropathy claim is addressed in the REMAND that follows the ORDER section of this decision.

FINDINGS OF FACT

1. The Veteran was exposed to herbicides while serving at the Royal Thai Air Force Base in Korat in 1968 and 1969; he also deployed for temporary duty from such base to the Republic of Vietnam.
2. The Veteran has a current diagnosis of diabetes mellitus, type II.

CONCLUSION OF LAW

It is presumed that the Veteran's diabetes mellitus, type II was incurred as a result of his active service. 38 U.S.C.A. §§ 1110, 1116, 5107 (West 2002); 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309 (2013).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

Duties to Notify and Assist

As a preliminary matter, the Board notes that the Veteran has been provided all required notice. In addition, the evidence currently of record is sufficient to substantiate his claim. Therefore, no further development is required under 38 U.S.C.A. §§ 5103, 5103A (West 2002) or 38 C.F.R. § 3.159 (2013).

Legal Criteria

Service connection may be established for disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C.A. § 1110; 38 C.F.R. § 3.303.

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 a herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. 38 C.F.R. § 3.307(a)(6)(iii).

If a Veteran was exposed to an herbicide agent during active service and manifests diabetes mellitus, type II any time after such service, such disease will be service connected 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. §§ 3.307(a)(6), 3.309(e).

Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary. The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. 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 (West 2002); 38 C.F.R. § 3.102 (2013); *see also Gilbert v. Derwinski*, 1 Vet. App. 49, 53 (1990).

To deny a claim on its merits, the evidence must preponderate against the claim. *Aleman v. Brown*, 9 Vet. App. 518, 519 (1996), citing *Gilbert*, 1 Vet. App. at 54.

Analysis

The Veteran contends that he is entitled to service connection for his diabetes mellitus type II disability, as it is the result of exposure to Agent Orange while serving as an airplane maintenance mechanic at Royal Thai Air Force Base in Korat, and in Vietnam in 1968 and 1969. Specifically, during the June 2012 hearing before the Board, he testified that while assigned to such base, he witnessed herbicides being used to eliminate vegetation from the perimeter of the air field and around the United States Army camp next to Korat Air Force Base. He further stated that on occasion, he was required to go on temporary deployments to Vietnam to help recover disabled aircraft, and when in country, he was exposed to defoliant that was released from Saigon.

A review of the record shows the Veteran was diagnosed with diabetes mellitus, type II in October 2006, and he has continued to receive treatment for such and associated residuals since that time.

The Veteran's DD Form 214 shows that he served in the United States Air Force from January 1966 to June 1969, and reflects approximately 12 months of foreign

service. Such form also demonstrates an occupational specialty of an airplane maintenance mechanic. Further, the Veteran's representative submitted a picture of the Veteran at the Yim Yam Theater, which was taken when he was serving at the Royal Thai Air Force Base in Korat during the aforementioned time frame. Although there has been a formal finding of unavailability of the Veteran's service personnel records by the agency of original jurisdiction, the Veteran's service treatment records dated in 1968 and 1969 demonstrate that he was assigned to Korat Air Force Base in Thailand.

VA has acknowledge that herbicides were used at the Korat base during the time the Veteran was stationed there. The Veteran has provided credible testimony indicating that he was in areas where herbicides were used. Moreover, while official military records do not affirmatively show that the Veteran was ever stationed in Vietnam, they do not contradict the evidence offered by the Veteran. Extending the benefit of doubt to the Veteran, the Board finds that the Veteran was exposed to herbicides while stationed at the Korat base and that he also served on temporary duty in Vietnam. Therefore, his diabetes mellitus is presumed to be the result of his exposure to herbicides in service.

ORDER

Entitlement to service connection for diabetes mellitus, type II is granted.

REMAND

The Veteran is seeking service connection for peripheral neuropathy as a complication of his service-connected diabetes mellitus, type II. The medical evidence of record does not adequately address whether peripheral neuropathy is a complication of the diabetes. Therefore, further development to obtain any outstanding, pertinent treatment records and to afford the Veteran an appropriate VA examination is in order.

Accordingly, this case is REMANDED to the RO or the Appeals Management Center (AMC), in Washington, D.C., for the following actions:

1. The RO or the AMC should undertake appropriate development to obtain any outstanding evidence pertinent to the Veteran's claim.
2. Then, the Veteran should be afforded a VA examination by a physician with sufficient expertise to determine the nature and etiology of any peripheral neuropathy present during the pendency of the claim. The claims folder and any pertinent evidence in Virtual VA that is not contained in the claims folder must be made available to and reviewed by the examiner. Any indicated studies should be performed.

Following the review of the Veteran's pertinent history and the examination, the examiner should state an opinion with respect to any peripheral neuropathy present during the period of the claim as to whether there is a 50 percent or better probability that the disorder was caused or permanently worsened by the Veteran's diabetes mellitus, type II.

The rationale for all opinions expressed must also be provided. If the examiner is unable to provide any required opinion, he or she should explain why.

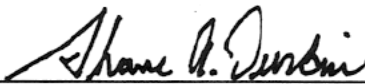
3. The RO or the AMC should also undertake any other development it determines to be warranted.
4. Then, the RO or the AMC should readjudicate the Veteran's claim. If the benefit sought on appeal is not granted to the Veteran's satisfaction, a Supplemental

Statement of the Case should be issued, and the Veteran and his representative should be afforded the requisite opportunity to respond before the claims folder is returned to the Board for further appellate action.

By this remand, the Board intimates no opinion as to any final outcome warranted.

The Veteran need take no action until he is otherwise notified, but he may furnish additional evidence and/or argument during the appropriate time frame. *See Kutscherousky v. West*, 12 Vet. App. 369 (1999).

This REMAND must be afforded expeditious treatment. The law requires that all claims that are remanded by the Board or the Court 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).



Shane A. Durkin

Veterans Law Judge, Board of Veterans' Appeals