

**Occupation 1: Vehicle driver for aerospace ground equipment (AGE). Responsibilities included pick-up and delivery of AGE from all activities within the aircraft maintenance complex. He also performed minor maintenance on assigned tow vehicles. While stationed at Nakhon Phanom, he was an**

**Occupation 2: Airborne Photographic Equipment Technician. His duties included loading and unloading aircraft, and repairing equipment in the shop and on the flight line.**

Citation Nr: 1111819

Decision Date: 03/24/11

Archive Date: 04/06/11

DOCKET NO. 10-27 288 )  
 )  
 )

DATE

On appeal from the  
Department of Veterans Affairs Regional Office in Manchester, New Hampshire

#### THE ISSUES

1. Entitlement to service connection for prostate cancer as a result of exposure to herbicides.
2. Entitlement to service connection for erectile dysfunction secondary to service-connected hypertension (claimed as special monthly compensation for loss of use of a creative organ).

#### REPRESENTATION

Appellant represented by: Disabled American Veterans

#### WITNESSES AT HEARING ON APPEAL

Appellant and his wife

#### ATTORNEY FOR THE BOARD

K. Osegueda, Associate Counsel

#### INTRODUCTION

The Veteran served on active duty from November 1966 to August 1988 with service in Thailand from February 1968 to January 1969 and from September 1971 to September 1972.

These matters come before the Board of Veterans' Appeals (Board) on appeal from two rating decisions. A September 2008 rating decision by the Winston-Salem, North Carolina, Regional Office (RO) of the Department of Veterans Affairs (VA), in pertinent part, denied service connection for prostate

cancer. A September 2008 rating decision by the Manchester, New Hampshire RO denied service connection for erectile dysfunction.

In December 2010, the Veteran provided testimony at a video conference hearing at the RO held before the undersigned Veterans Law Judge. A transcript of the hearing has been associated with the claims folder.

The issue of entitlement to service connection for erectile dysfunction secondary to service-connected hypertension (claimed as special monthly compensation for loss of use of a creative organ) is REMANDED to the RO via the Appeals Management Center (AMC), in Washington, DC. VA will notify the appellant if further action is required.

#### FINDINGS OF FACT

1. The VA has fully informed the veteran of the evidence necessary to substantiate his claim and the VA has made reasonable efforts to develop such evidence.

2. Resolving reasonable doubt in the Veteran's favor, the Veteran's duty in Thailand from February 1968 to January 1969 and from September 1971 to September 1972 resulted in his exposure to herbicides and as a consequence, he developed prostate cancer.

#### CONCLUSION OF LAW

Prostate cancer may be presumed to have been incurred by exposure to herbicides active military service. 38 U.S.C.A. §§ 1101, 1110, 1116 (West 2002 & Supp. 2006); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2010).

#### REASONS AND BASES FOR FINDING AND CONCLUSION

The provisions of the Veterans Claims Assistance Act of 2000 (VCAA), codified at 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a), and as interpreted by the United States Court of Appeals for Veterans Claims (the Court) are applicable to this appeal.

The Board has considered the VCAA provisions with regard to the matter on appeal but finds that, given the favorable action taken below, no further analysis of the development of this claim is necessary at the present time.

#### Law and Regulations

Service connection may be granted for disability resulting from disease or injury incurred in or aggravated by active military service. 38 U.S.C.A. §§ 1110, 1131 (West 2002); 38 C.F.R. § 3.303. Service connection may be established for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes the disease was incurred in service. 38 C.F.R. § 3.303(d).

As a general matter, service connection for a disability on the basis of the merits of such claim is focused upon (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. See Cuevas v. Principi, 3 Vet. App. 542 (1992); Rabideau v. Derwinski, 2 Vet. App. 141 (1992).

A veteran who, during active military, naval, or air service, 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 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.

Prostate cancer shall have become manifest to a degree of 10 percent or more within a year after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service. 38 C.F.R. § 3.307(a)(6)(ii) (2009).

VA's Secretary has determined that a presumption of service connection based on exposure to herbicides used in the Republic of Vietnam during the Vietnam era is not warranted for any condition for which the Secretary has not specifically determined a presumption of service connection is warranted. 67 Fed. Reg. 42600-42608 (2002).

VA Compensation and Pension Service (C&P) has determined that a special consideration of herbicide exposure on a factual basis should be extended to Veterans whose duties placed them on or near the perimeters of Thailand military bases when a Veteran with service in Thailand during the Vietnam Era claims a disability based on herbicide exposure. The Veteran must have served with the U.S. Air Force in Thailand during the Vietnam Era at one of the Royal Thai Air Force Bases (RTAFBs) at U-Tapao, Ubon, Nakhon Phanom, Udorn, Takhli, Korat, or Don Muang, and as an Air Force security policeman, security patrol dog handler, member of the security police squadron, or otherwise near the air base perimeter as shown by evidence of daily work duties, performance evaluation reports, or other credible evidence. VA Manual M21-1 Manual Rewrite, Part IV, ii, 2., Chapter.10.q (2010).

The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has also held that when a claimed disorder is not included as a presumptive disorder, direct service connection may nevertheless be established by evidence demonstrating that the disease was in fact "incurred" during the service. See Combee v. Brown, 34 F.3d 1039 (Fed. Cir. 1994).

The Board must determine whether the evidence supports the claim or is in relative equipoise, with the claimant prevailing in either case, or whether the preponderance of the evidence is against the claim, in which case the claim must be denied. See Gilbert v. Derwinski, 1 Vet. App. 49, 55 (1990). When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, VA shall give the benefit of the doubt to the claimant. 38 U.S.C.A. § 5107; 38 C.F.R. § 3.102 (2009).

#### Factual Background

The Veteran contends that he developed prostate cancer as a result of an in-service event, including as a result of herbicide exposure while twice stationed in Thailand during the Vietnam War. Having carefully considered the claim in light of the record and the applicable law, the Board finds that the evidence is in equipoise and the claim will be allowed.

In this case, service medical records are negative for complaints, treatment, or diagnoses for a prostate disorder. His October 1987 retirement physical examination report noted a normal clinical evaluation of the anus and rectum, including the prostate.

Service personnel records confirm that the Veteran served in Thailand from February 1968 to January 1969 (Takhli RTAFB) and from September 1971 to September 1972 (Nakhon Phanom Airport (MAC)). Air Force performance reports during those periods indicate that while stationed at Takhli, he was a vehicle driver for aerospace ground equipment (AGE). Responsibilities included pick-up and delivery of AGE from all activities within the aircraft maintenance complex. He also performed minor maintenance on assigned tow vehicles. While stationed at Nakhon Phanom, he was an Airborne Photographic Equipment Technician. His duties included loading and unloading aircraft, and repairing equipment in the shop and on the flight line.

In July 2007, the Veteran's urologist at the Wayne Urological Associates performed a biopsy of the prostate that revealed adenocarcinoma. He elected to have it treated with seed implantation.

In support of his claim, the Veteran submitted a photograph of the Nakhon Phanom Airport, as well as a copy of pertinent pages of the Project CHECO Southeast Asia Report of Base defense in Thailand. This report outlined the measures taken to secure the perimeters of each military installation, including the use of herbicides. The photograph depicts an airbase literally devoid of vegetation while the surrounding areas is green with vegetation.

#### Analysis

It is concluded that in his two tours of duty in Thailand at Takhli RTAFB and Nakhon Phanom Airport (MAC), the Veteran was exposed to herbicides. His military occupational specialty was such that, at least during his first tour of duty, his daily work duties would have required him to drive along base roads near the perimeters where herbicides were sprayed.

In this case, the Veteran's prostate cancer is classified as one of the enumerated diseases associated with Agent Orange exposure under 38 C.F.R. § 3.309(e) (2009). Therefore resolving reasonable doubt in the Veteran's favor, service connection for prostate cancer is allowed.

#### ORDER

Service connection for prostate cancer as a result of exposure to herbicides is allowed.

#### REMAND

As an initial matter, the provisions of the Veterans Claims Assistance Act of 2000 (VCAA), codified at 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a), and as interpreted by the United States Court of Appeals for Veterans Claims (the Court), are applicable to this appeal. The RO provided the Veteran with VCAA notice as to all elements of the claims in correspondence dated in January 2008, February 2008, March 2008, and June 2008. In the correspondence, the RO notified him of how VA determines the disability rating and effective

dated when a disability is found to be connected to service. See *Dingess v. Nicholson*, 19 Vet. App. 473 (2006).

Regarding the issue of entitlement to service connection for erectile dysfunction secondary to service-connected hypertension (claimed as special monthly compensation for loss of use of a creative organ), subsequent to the April 2010 statement of the case, the Veteran submitted various internet articles and photographs, a military performance evaluation from November 1967 to November 1968, a buddy statement dated November 2003, correspondence between a former Congressman and the Secretary of the Air Force dated June 2005, email correspondence dated March 2009 and April 2010 regarding military flights, and his own statements that were received in May 2010. While some of this evidence is duplicative of that already in the claims folder, other evidence is not. Since an SSOC has not been issued that addresses this additional evidence, the issue must be remanded for readjudication and the issuance of an SSOC that considers the additional medical evidence received since May 2010.

The Veteran has consistently maintained that the medications he takes for his service connected hypertension cause erectile dysfunction (ED). Although a VA physician provided an opinion in April 2010 that while the Veteran took HTCZ for hypertension, ED was not a side effect of that drug. Associated with the claims folder is an internet articles indicating that ED can be a side effect of HTCZ.

A disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. 38 C.F.R. § 3.310(a) (effective before and after October 10, 2006). The Court has held that when aggravation of a nonservice-connected condition is proximately due to or the result of a service-connected condition the veteran shall be compensated for the degree of disability over and above the degree of disability existing prior to the aggravation. *Allen v. Brown*, 7 Vet. App. 439 (1995). While the physician indicated that the use of HTCZ did not cause ED, there was no mention as to whether the use of HCTZ aggravated the ED.

Further assessment is required.

Accordingly, the case is REMANDED for the following action:

1. The AMC/RO is to return the file to the VA physician, who provided the April 2010, if available, and ask her to reconcile her opinion with the internet article indicating a possible relationship. She should be asked if it is at least as likely as not (50 percent probability or greater) that the Veteran's ED is caused or aggravated by the use of HTCZ. Adequate reasons and bases are to be provided to support her opinion. If the physician is not available, the file should be provided to another physician for the opinion requested above.
2. After ensuring development is complete, the RO should re-adjudicate the claim for service connection for erectile dysfunction. If the claim remain denied, issue an SSOC before returning the claims to the Board, if otherwise in order.

The appellant has the right to submit additional evidence and argument on the matter or matters 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. 2010).

---

RENÉE M. PELLETIER  
Veterans Law Judge, Board of Veterans' Appeals  
Department of Veterans Affairs