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On appeal from the  
Department of Veterans Affairs Regional Office in Cleveland,  
Ohio

#### THE ISSUES

1. Entitlement to service connection for psoriasis.
2. Entitlement to service connection for psoriatic arthritis.

#### REPRESENTATION

Appellant represented by: Eddie Lawson, Jr. Attorney at  
Law

#### WITNESS AT HEARING ON APPEAL

Appellant

#### ATTORNEY FOR THE BOARD

William J. Jefferson III, Counsel

#### INTRODUCTION

The veteran had active service from June 1966 to March 1968.

This matter is before the Board of Veterans' Appeals (Board) on appeal from a February 2002 rating decision by a Regional Office (RO) of the Department of Veterans Affairs (VA).

In May 2003 the veteran was afforded a Travel Board hearing at the RO that was conducted by the undersigned Veterans Law Judge.

#### FINDING OF FACT

The veteran's psoriasis and psoriatic arthritis are probably etiologically related to reported quinine ingestion that occurred during service in the Republic of Vietnam.

#### CONCLUSION OF LAW

Psoriasis and psoriatic arthritis were incurred during military service. 38 U.S.C.A. §§ 1101, 1110, 1112, 5107 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2003).

#### REASONS AND BASES FOR FINDING AND CONCLUSION

On November 9, 2000, the President of the United States signed into law the Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. No. 106-475, 114 Stat. 2096 (2000), now codified at 38 U.S.C.A. §§ 5102, 5103, 5103A, 5107 (West 2002). This newly enacted legislation provides, among other things, for notice and assistance to claimants under certain circumstances. VA has issued final rules to amend adjudication regulations to implement the provisions of VCAA. See 38 C.F.R. §§ 3.102, 3.156(a), 3.159 and 3.326(a)). The intended effect of the new regulations is to establish clear guidelines consistent with the intent of Congress regarding the timing and the scope of assistance VA will provide to a claimant who files a substantially complete application for VA benefits, or who attempts to reopen a previously denied claim. Where laws or regulations change after a claim has been filed or reopened and before the administrative or judicial process has been concluded, the version most favorable to the appellant will apply unless Congress provided otherwise or has permitted the Secretary of VA to do otherwise and the Secretary has done so. See *Karnas v. Derwinski*, 1 Vet. App. 308 (1991).

Concerning the veteran's claims of service connection for psoriasis and psoriatic arthritis, the Board finds that there has been substantial compliance with the assistance provisions set forth in the new law and regulations. The record in this case includes the veteran's service medical records, and VA and private treatment records and examination reports. With regard to providing assistance to the veteran it is also noted that he has been notified of the applicable laws and regulations which set forth the criteria for entitlement to service connection. Considering the foregoing, the Board therefore finds that the notice requirements of the new law and regulation have been met.

The Board has reviewed the facts of this case in light of VCAA and the new VCAA regulations. As discussed above, VA has made all reasonable efforts to assist the veteran in the development of his claim and has notified him of the information and evidence necessary to substantiate the claim. Consequently, the case need not be referred to the veteran or his representative for further argument, as the Board's consideration of the new law and new regulations in the first instance does not prejudice him. See generally *Sutton v. Brown*, 9 Vet. App. 553 (1996); *Bernard v. Brown*, 4 Vet. App. 384 (1993); VAOPGCPREC 16-92 (July 24, 1992).

## Law and regulations

In general, applicable laws and regulations state that service connection may be granted for disability resulting from a disease or injury incurred in or aggravated by military service. 38 U.S.C.A. § 1110; 38 C.F.R. § 3.303. Certain chronic diseases, including arthritis, are considered to have been incurred in service even though there is no evidence of such disease during the period of service when the chronic disease manifests to a compensable degree within one year from separation from service. 38 U.S.C.A. §§ 1101, 1112, 1113, 1137; 38 C.F.R. §§ 3.307, 3.309.

A preexisting injury or disease will be considered to have been aggravated by service where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease. 38 U.S.C.A. § 1153 (West 2002); 38 C.F.R. § 3.306 (2003).

Service connection may also be granted for a disease first diagnosed after discharge when all of the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

A chronic, tropical, prisoner-of-war related disease, or a disease associated with exposure to certain herbicide agents listed in 38 C.F.R. § 3.309 will be considered to have been incurred in service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in 38 C.F.R. § 3.309(a) will be considered chronic. 38 C.F.R. § 3.307(a).

Tropical disease. The disease must have become manifest to a degree of 10 percent or more within 1 year from date of separation from service as specified in paragraph (a)(2) of this section, or at a time when standard accepted treatises indicate that the incubation period commenced during service. The resultant disorders or diseases originating because of therapy administered in connection with a tropical disease or as a preventative may also be service connected. 38 C.F.R. § 3.307(a)(4).

## Factual Background

The veteran's service DD 214, Report of Transfer or Discharge, shows that his service occupational specialty was as a military policeman, and that he was awarded the Vietnam Service Medal and Vietnam Campaign medal. He had 11 months foreign or sea service.

A January 1966 service induction Report of Medical History

reveals a history of the veteran's grandparents having or having had had rheumatism or arthritis. It was also affirmatively acknowledged that the veteran had or had had swollen or painful joints. In the physician's examination medical summary report, it was reported that the veteran had leg cramps and pain in his knees. The induction physical examination report was negative for any pertinent physical disorders.

The veteran's entire service medical records, including his separation physical examination report are negative for any pertinent physical disorders.

Private medical records from the late 1980's reveal radiographic findings showing swelling of the right os calis, early arthritis of the left great toe, and an arthritic inflammatory process in the right hand later diagnosed as psoriatic arthritis.

In a December 1988 statement from a physician of osteopathy, it was reported that for the last three to four years the veteran had had severe problems with joint pain. It was reported that the symptoms had originally began in his feet and had spread to his left shoulder and wrist. A minor psoriatic rash involving the scalp was reported. The clinician opined that the polyarticular arthritis was consistent with psoriatic arthritis.

Private clinical records from the 1990's through 2001 show ongoing treatment for psoriatic arthritis with multiple joint pain involving the knees, wrists, and hands along with multiple hand and wrist surgical procedures to alleviate pain. Treatment for scattered psoriatic plaques with a history to 1975 or 1980 was also reported.

A VA general medical examination was performed in December 2001. The veteran's medical history including numerous surgeries of the hands and wrists were reported. A review of musculoskeletal history revealed that the veteran had been diagnosed with psoriatic arthritis, but there was some concern of a rheumatic component. It was reported that in the 1970's or 1980's he developed pain in the small right finger and developed a flexion deformity and over time he developed bilateral wrist and hand pain with decreased range of motion. Bilateral shoulder, knee, ankle, and toe pain were also reported. Physical findings revealed bilateral claw hands. It was reported that the veteran had multiple upper extremity thoracic and lower extremity (psoriatic) lesions. Limitation of motion of the upper and lower extremity joints was reported.

The physical examination of the skin revealed area of exfoliation, crusting, and a history of severe psoriatic arthritis. There was no acne formed disease or chloracne. Large and small erythematosus scaly plaques were reported in the groin, scrotum, perianal, sacral, scalp, thighs, abdomen, forearms, elbows, shoulders, lumbar and buttock areas. The

diagnoses were psoriatic arthritis, bilateral wrist, hands, elbows, knees, ankles toes, as well as cervical and lumbar spine; severe psoriasis. At a December 2001 VA diabetes examination it was reported that that in 1975 or 1980 the veteran noted a skin rash with red scaling that over the years had progressed to larger portions of his body.

Received in August 2002 were previously submitted private medical records along with information from medical dictionaries and web information on psoriatic arthritis and psoriasis.

In an August 2002 statement from a physician of osteopathy, it was reported that the veteran had sought treatment in 1988 for a four-year history of severe joint pain, and pain originating in 1977. An initial diagnosis of asymmetric polyarticular arthritis was confirmed subsequent to referral in December 1988. It was reported that the veteran has a family history of arthritis and a genetic disposition to arthritis, which was possibly triggered by an environmental stimulus. It was reported that Agent Orange or Dioxin has been associated with arthritis as a catalyst. The physician of osteopathy stated that considering the fact that the veteran reported significant pain as early as 1972, it was possible if not probable that the condition manifested itself to a degree of 10 percent or more within one year of his service in the Republic of Vietnam or within a year of March 18, 1968.

It was also indicated that daily during his Vietnam tour, the veteran ingested an anti-malarial drug, Quinine Sulfate which had been discontinued as an anti-malarial drug. The physician of osteopathy reported that the veteran had a serious case of psoriasis and that arthritis was a serious effect of psoriasis. It was reported that psoriasis may be produced for no apparent reason or has been known to flare-up as a result of sunburn, skin irritation or has been known to result from ingestion and discontinuance of anti-malarial drugs. The physician of osteopathy indicated that "cutaneous rashes" is one of the hypersensitivity cautions in the use of Quinine Sulfate and other anti-malarial drugs. He opined that psoriasis develops years before joint swelling and pain which was evident at least since 1977 in the veteran, and that it is possible or probable cause of the psoriasis or the seriousness of the condition in the veteran came as a direct result of ingestion and discontinuance of the anti-malarial drug during his Vietnam service.

In a May 2003 statement the physician of osteopathy reported that he had supplemented his previous medical report with medical treatises on the subject of psoriasis, psoriatic arthritis and stimulants and catalysts of the disease. The physician of osteopathy stated that psoriasis may be dominantly inherited and that a predisposed individual has the potential to develop lesions at any time, depending in part on the interaction of environmental influences with the skin that has a genetically determined abnormal physiology.

It was stated that anti-malarial drugs are known to cause skin eruptions and changes in pigmentation, and that first and foremost among the anti-malarial drugs is Quinine. The physician of osteopathy opined that the veteran was predisposed to psoriasis, i.e., a genetic disorder and that based on medical treatises, the ingestion of anti-malarial medications during his tour in Vietnam was the environmental factor that triggered the psoriasis that eventually led to the development of psoriatic arthritis.

The physician of osteopathy stated that prolonged involvement can lead to marked joint involvement which happened in the case of the veteran. He opined that the triggering of psoriasis would have been immediate upon its ingestion and would have been cumulative assuming the veteran ingested anti-malarial medications daily during his Vietnam tour. It was stated that psoriatic eruptions may not have been evident immediately, but could consist of an unnoticeable discoloration of skin which was consistent with accepted treatises on drug induced skin diseases in that there may not be an immediate inflammatory reaction to the drug, but there may be a late phase reaction or true delayed hypersensitivity component. The physician of osteopathy stated that skin response discoloration after the administration of anti-malarial medications has been seen from as close to four months from administration to 70 months after administration.

In association with the May 2003 medical opinion, the physician of osteopathy submitted excerpts from several medical treatises on dermatotoxicology and dermatology regarding psoriasis and psoriatic arthritis; pigmentary changes caused by ingestion of anti-malarial drugs; and environmental influences in the development of psoriasis.

In a November 2002 affidavit from the veteran's spouse, she indicated that she had been married to the veteran since 1965, and that she had observed his appearance and condition including psoriasis and psoriatic arthritis. It was stated that in October or November 1968 she observed the skin on the veteran's face and it was observed to be flaking and a red color. She stated that it would flake in the area of his beard at the crack of the nose at the corners of his mouth, and the bottom of his nose. It was stated that the veteran had complained to her about joint pain on or about 1970, and that the scaling and red and flaking patches of skin grew since his termination of duty in Vietnam and had spread to a majority of his entire body.

A personal hearing was held in May 2003 at the RO before the undersigned veterans law judge. The veteran testified that he had a year's tour in the Republic of Vietnam with B Company 716 MP Battalion. He stated that as part of his "SOP" he was required to ingest anti-malarial medication on a daily basis for the entire duration of his tour in Vietnam. The veteran stated that he understood that there was quinine in the medication. He testified that he did not have psoriasis or skin erosions upon entry into service. He

stated that immediately after his discharge from service he sought medical advice concerning his skin erosions, and that the records were not available. The veteran testified that when he was home from Vietnam he grew a beard and began to have (skin) problems and when he shaved his beard he still had problems. He stated that he sought treatment for the problem in 1968 or 1969, and that the problem had worsened and spread since that time. The veteran testified that he had had surgeries on his hands and knees due to psoriatic arthritis. He stated that his skin erosions began before the problem with his joints.

#### Analysis

The Board has reviewed the entire evidentiary data of record which confirms that the veteran served in the Republic of Vietnam. However, neither psoriasis nor psoriatic arthritis are presumed diseases for possible exposure to an herbicide agent pursuant to 38 C.F.R. § 3.309(e).

The record goes on to show that the veteran's pre-induction report of medical history reveals a history of swollen or painful joints along with a family history of rheumatism or arthritis. However, the veteran's pre-induction physical examination report along with the entire service medical records and discharge physical examination records are absent for any complaints or findings referable to a skin disorder, including psoriasis or arthritis, including psoriatic arthritis. Evidence of any pertinent pre-existing disorder is not shown. 38 U.S.C.A. § 1153; 38 C.F.R. § 3.306.

There is a dearth of interim medical evidence and the first medical evidence revealing treatment for psoriatic arthritis is in the late 1980's with subsequent multiple surgeries of the wrists and knees, along with treatment for psoriatic lesions with a reported history of skin lesions to 1975 or 1980.

The veteran has testified that during service in Vietnam he was required to ingest anti-malarial medication that he believed was quinine. In addition, the veteran and his spouse have offered testimony and statements indicating that shortly after service, in late 1968, he began to have skin eruptions that began on his face and subsequently worsened and spread. As indicated previously, there is no interim medical records in support of the veteran's assertions and generally, lay witnesses are not considered competent to offer evidence which requires medical knowledge. However, laypersons are competent to describe symptoms. See *Espiritu v. Derwinski*, 2 Vet. App. 492 (1992).

In this regard, the veteran and his spouse's testimony and statements are considered competent for the purpose of reporting and describing the medication that he ingested during service, as well as the skin eruptions they reported seeing on the veteran's face in 1968. Furthermore, the

record includes a statement from a physician of osteopathy in which it is opined that an etiological relationship exists between the ingestion of quinine and psoriasis and resultant psoriatic arthritis. Pertinent medical treatises have been offered in support of the opinion. The Board also notes that other medical evidence does not refute the private medical opinion offered.

The veteran's representative asserts that service connection for psoriasis and psoriatic arthritis is available pursuant to 38 C.F.R. § 3.307(a)(4), which provides that resultant disorders or diseases originating because of therapy administered in connection with a tropical disease or as a preventative may also be service connected. 38 C.F.R. § 3.307(a)(4). In addition it is important to note that service connection may also 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). When all the evidence is assembled, VA is responsible for determining whether the evidence supports the claim or is in relative equipoise, with the appellant prevailing in either event, or whether a preponderance of the evidence is against a claim, in which case, the claim is denied. *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990).

Interim medical information supporting the veteran's claims is limited at best. However, considering the unrefuted medical opinion of the doctor of osteopathy, along with the credible testimony and statements offered from the veteran and his spouse, there is a state of equipoise of the positive evidence with the negative evidence to warrant a favorable decision with regard to service connection for psoriasis and psoriatic arthritis.

ORDER

Service connection for psoriasis is granted.

Service connection for psoriatic arthritis is granted.

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WAYNE M. BRAEUER  
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs

YOUR RIGHTS TO APPEAL OUR DECISION



The attached decision by the Board of Veterans' Appeals (BVA or Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."

If you are satisfied with the outcome of your appeal, you do not need to do anything. We will return your file to your local VA office to implement the BVA's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- ? Appeal to the United States Court of Appeals for Veterans Claims (Court)
- ? File with the Board a motion for reconsideration of this decision
- ? File with the Board a motion to vacate this decision
- ? File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- ? Reopen your claim at the local VA office by submitting new and material evidence.

There is no time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. None of these things is mutually exclusive - you can do all five things at the same time if you wish. However, if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your case because of jurisdictional conflicts. If you file a Notice of Appeal with the Court before you file a motion with the BVA, the BVA will not be able to consider your motion without the Court's permission.

How long do I have to start my appeal to the Court? You have 120 days from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the United States Court of Appeals for Veterans Claims. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the Court. As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you, you will then have another 120 days from the date the BVA decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, it is your responsibility to make sure that your appeal to Court is filed on time.

How do I appeal to the United States Court of Appeals for Veterans Claims?  
Send your Notice of Appeal to the Court at:

Clerk, U.S. Court of Appeals for Veterans Claims  
625 Indiana Avenue, NW, Suite 900  
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's web site on the Internet at

www.vetapp.uscourts.gov, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal with the Court, not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the BVA to reconsider any part of this decision by writing a letter to the BVA stating why you believe that the BVA committed an obvious error of fact or law in this decision, or stating that new and material military service records have been discovered that apply to your appeal. If the BVA has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Send your letter to:

Director, Management and Administration (014)  
Board of Veterans' Appeals  
810 Vermont Avenue, NW  
Washington, DC 20420

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Remember, the Board places no time limit on filing a motion for reconsideration, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to vacate? You can file a motion asking the BVA to vacate any part of this decision by writing a letter to the BVA stating why you believe you were denied due process of law during your appeal. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address above for the Director, Management and Administration, at the Board. Remember, the Board places no time limit on filing a motion to vacate, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to revise the Board's decision on the basis of clear and unmistakable error? You can file a motion asking that the Board revise this decision if you believe that the decision is based on "clear and unmistakable error" (CUE). Send this motion to the address above for the Director, Management and Administration, at the Board. You should be careful when preparing such a motion because it must meet specific

requirements, and the Board will not review a final decision on this basis more than once. You should carefully review the Board's Rules of Practice on CUE, 38 C.F.R. 20.1400 -- 20.1411, and seek help from a qualified representative before filing such a motion. See discussion on representation below. Remember, the Board places no time limit on filing a CUE review motion, and you can do this at any time.

How do I reopen my claim? You can ask your local VA office to reopen your claim by simply sending them a statement indicating that you want to reopen your claim. However, to be successful in reopening your claim, you must submit new and material evidence to that office. See 38 C.F.R. 3.156(a).

Can someone represent me in my appeal? Yes. You can always represent yourself in any claim before VA, including the BVA, but you can also appoint someone to represent you. An accredited representative of a recognized service organization may represent you free of charge. VA approves these organizations to help veterans, service members, and dependents prepare their claims and present them to VA. An accredited representative works for the service organization and knows how to prepare and present claims. You can find a listing of these organizations on the Internet at: [www.va.gov/vso](http://www.va.gov/vso). You can also choose to be represented by a private attorney or by an "agent." (An agent is a person who is not a lawyer, but is specially accredited by VA.)

If you want someone to represent you before the Court, rather than before VA, then you can get information on how to do so by writing directly to the Court. Upon request, the Court will provide you with a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to represent appellants. This information is also provided on the Court's website at [www.vetapp.uscourts.gov](http://www.vetapp.uscourts.gov).

Do I have to pay an attorney or agent to represent me? Except for a claim involving a home or small business VA loan under Chapter 37 of title 38, United States Code, attorneys or agents cannot charge you a fee or accept payment for services they provide before the date BVA makes a final decision on your appeal. If you hire an attorney or accredited agent within 1 year of a final BVA decision, then the attorney or agent is allowed to charge you a fee for representing you before VA in most situations. An attorney can also charge you for representing you before the Court. VA cannot pay fees of attorneys or agents.

Fee for VA home and small business loan cases: An attorney or agent may charge you a reasonable fee for services involving a VA home loan or small business loan. For more information, read section 5904, title 38, United States Code.

In all cases, a copy of any fee agreement between you and an attorney or accredited agent must be sent to:

Office of the Senior Deputy Vice Chairman (012)  
Board of Veterans' Appeals  
810 Vermont Avenue, NW  
Washington, DC 20420

The Board may decide, on its own, to review a fee agreement for reasonableness, or you or your attorney or agent can file a motion asking the Board to do so. Send such a motion to the address above for the Office

of the Senior Deputy Vice Chairman at the Board.

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