



competent evidence of a nexus between the claimed in-service disease or injury and the present disease or injury. See *Hickson v. West*, 12 Vet. App. 247 (1999); *Jandreau v. Nicholson*, 492 F.3d 1372 (Fed. Cir. 2007).

There are statutory presumptions and VA regulations implementing them, that are intended to allow service connection for certain diseases when the evidence might otherwise not indicate service connection is warranted. See 38 C.F.R. § 3.303(d) (2015). In the case of a Veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era, namely from February 28, 1961, to May 7, 1975, VA regulations provide that he shall be presumed to have been exposed during such service to an herbicide agent, including Agent Orange, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. 38 C.F.R. § 3.307(a)(6)(iii) (2015). Section 3.307(d)(6) provides that the term "herbicide agent" means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975. 38 C.F.R. § 3.307(d)(6)(i). 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. *Id.*

The following diseases shall be service connected if the Veteran was exposed to an herbicide agent during active service, even though there is no record of such disease during service, and provided further that the requirements of 38 C.F.R. § 3.307(d) (2013) are satisfied: chloracne or other acneform disease consistent with chloracne if manifest to a degree of 10 percent within one year of date of last exposure, type II diabetes mellitus, Hodgkin's disease, chronic lymphocytic leukemia, multiple myeloma, non-Hodgkin's lymphoma, acute and subacute peripheral neuropathy, porphyria cutanea tarda, prostate cancer, certain respiratory cancers, soft tissue sarcoma, hairy cell leukemia and other chronic B-cell leukemias, Parkinson's disease, and ischemic heart disease. 38 C.F.R. § 3.309(e) (2015).

The Veteran has argued that he was exposed to herbicides while stationed in Udorn, Thailand, one of the Royal Thai Air Force Bases.

While all Veterans who served in the Republic of Vietnam during the Vietnam era are presumed to have been exposed to an herbicide agent, VA has established a procedure for verifying exposure to herbicides in Thailand during the Vietnam era. In this regard, 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. That allows for presumptive service connection of the diseases associated with herbicide exposure. VA Adjudication Manual, M21-1MR, Part IV, Subpart ii, Chapter 2, Section C ("M21-1MR").

Notably, 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 those 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, that applies only during the Vietnam era, from February 28, 1961, to May 7, 1975. M21-1MR, Part IV, Subpart ii, Chapter 2, Section C.10.(q).

The record reflects that the Veteran served in Udorn, Thailand, with a MOS of electronic warfare repairman. The Veteran stated at his December 2015 videoconference hearing that although he did not have one of the above mentioned MOS positions, his barracks were near the perimeter of the base and he often drove along the perimeter when delivering people and power units to the flight line. He also stated that he frequently entered and exited the base, which also put him into contact with the perimeter. The Veteran reported, and his wife verified, that he and other fellow airmen weekly left the base to go into town putting them frequently in contact with the perimeter of the base. The Veteran's wife testified that he wrote her letters about what he was doing and he mentioned that he went into town weekly. The Veteran further reported feeling a mist falling, even though it was not raining on multiple occasions and there was no foliage around his barracks or parts of the flight line which he visited frequently. The Veteran is competent and credible to report the circumstances of his service, and there is no evidence which contradicts his report. Given the record evidence that tends to support that the Veteran was often around the perimeter of the base in Thailand, the Board finds that herbicide exposure should be presumed.

In light of the above, the Board finds the evidence is at least in equipoise regarding the

Veteran's herbicide exposure. Accordingly, the Veteran's diagnosed chronic lymphocytic leukemia shall be presumptively service-connected on the basis of the Veteran's herbicide exposure during active duty service in Thailand. Resolving all reasonable doubt in the Veteran's favor, the Board concludes that service connection for chronic lymphocytic leukemia has been established. 38 U.S.C.A. § 5107; 38 C.F.R. § 3.102; Gilbert v. Derwinski, 1 Vet. App. 49 (1990).

ORDER

Service connection for chronic lymphocytic leukemia is granted.

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BRADLEY W. HENNINGS  
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs

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