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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.

WITNESS AT HEARING ON APPEAL

Appellant

ATTORNEY FOR THE BOARD

L. Crohe, Counsel

INTRODUCTION

The appellant is a Veteran who served on active duty from February 1967 to February 1987.

His DD 214 show that his military decorations include the Vietnam Service Medal and additional service personnel records reflect that his military occupational specialty was aerology man and weather forecaster.

This appeal to the Board of Veterans' Appeals (Board) is from a June 2010 rating decision by the Department of Veterans Affairs (VA) Regional Office (RO) in Roanoke, Virginia. In a February 2014 rating decision, the RO readjudicated the Veteran's claim and confirmed and continued the denial regarding service connection for prostate cancer.

In September 2015, the Veteran testified at a Central Office hearing before the undersigned; a transcript of that hearing has been associated with the Veterans Benefits Management System (VBMS) paperless claims file. During his hearing, the Veteran withdrew representation by the Disabled American Veterans and indicated a desire to be represented pro se. In November 2015 correspondence, the Veteran submitted corrections to the transcript.

A review of the Virtual VA and VA paperless claims processing system does not reveal any additional documents pertinent to the present appeal, except as otherwise stated herein.

FINDINGS OF FACT

1. After affording the benefit of the doubt, during active service, on at least one occasion between June 1972 and December 1972, the Veteran set foot in Vietnam and served along the air base perimeter at the Udorn and Nam Phong Royal Thai Air Force Bases, therefore herbicide exposure is conceded on a direct or facts found basis.

2. Prostate cancer is attributable to exposure to an herbicide during service.

CONCLUSION OF LAW

The criteria for entitlement to service connection on a presumptive basis for prostate cancer have been met. 38 U.S.C.A. §§ 1110, 1116, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.303, 3.307,

REASONS AND BASES FOR FINDINGS AND CONCLUSION

VA has a duty to notify and assist claimants in substantiating a claim for VA benefits. 38 U.S.C.A. §§ 5100, 5102, 5103A, 5107, 5126 (West 2014); 38 C.F.R. §§ 3.102, 3.156(a), 3.159(b), 3.326(a) (2015). The Board is granting herein the benefit sought on appeal, so it is not necessary to discuss VA's compliance with the duties to notify and assist in substantiating this claim.

Here, the Veteran contends that he developed prostate cancer due to exposure to Agent Orange in Vietnam as well as in Thailand.

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

Any 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. 38 C.F.R. § 3.307(a) (6) (iii). "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. § 3.313(a); see also *Haas v. Peake*, 525 F.3d 1168, 1197 (Fed. Cir. 2008) (upholding VA's interpretation of § 3.307(a) (6) (iii) as requiring the service member's presence at some point on the landmass or the inland waters of Vietnam).

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 the Project CHECO Southeast Asia Report: Base Defense in Thailand (CHECO Report). 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. See also "Compensation & Pension (C&P) Service Bulletin" which establishes "New Procedures for Claims Based on Herbicide Exposure in Thailand and Korea," dated in May 2010.

The majority of troops in Thailand during the Vietnam Era were stationed at the Royal Thai Air Force Bases (RTAFB) at U-Tapao, Ubon, Nakhon Phanom, Udorn, Takhli, Korat, and Don Muang. If a US Air Force 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. See M21-1MR, Part IV, Subpart ii, Chapter 2, Section C.10 (q). U.S. Army Veterans who provided perimeter security on RTAF bases in Thailand anytime between February 28, 1961 and May 7, 1975. U.S. Army Veterans who were stationed on some small Army installations in Thailand anytime between February 28, 1961 and May 7, 1975. However, the later instance, the Army Veteran must have been a member of a military police (MP) unit or was assigned an MP military occupational specialty whose duty placed him/her at or near the base perimeter. Here, the Board notes that the Veteran is a marine.

If a Veteran was exposed to an herbicide agent during active military, naval, or air service, prostate cancer, shall be service-connected even though there is no record of such disease during service. 38 C.F.R. § 3.309(e). The diseases listed 38 C.F.R. § 3.309(e), including prostate cancer, shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne, porphyria cutanea tarda, and acute and subacute peripheral neuropathy 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).

Notwithstanding the foregoing presumption, a claimant is not precluded from establishing service connection with proof of direct causation. 38 U.S.C.A. § 1113(b); *Combee v. Brown*, 34 F.3d 1039, 1042 (Fed. Cir. 1994).

The Board must assess the credibility and weight of all the evidence, including the medical evidence, to determine its probative value, accounting for evidence which it finds to be persuasive or unpersuasive, and providing reasons for rejecting any evidence favorable to the claimant. See *Masors v. Derwinski*, 2 Vet. App. 181 (1992); *Wilson v. Derwinski*, 2 Vet. App. 614, 618 (1992); *Hattlestad v. Derwinski*, 1 Vet. App. 164 (1991); *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990). Equal weight is not accorded to each piece of evidence contained in the record; every item of evidence does not have the same probative value.

When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a claim, VA shall give the benefit of the doubt to the claimant. 38 U.S.C.A. § 5107. 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.

Treatment records from Walter Reed Naval Medical Center reveal that the Veteran has been diagnosed with prostate cancer in January 2010, one of the diseases for which service connection is presumed in veterans who were exposed to an herbicide agent.

Therefore, the Veteran's claim turns on whether he had exposure to an herbicide between June 1972 and December 1972. The Veteran does not contend, and his service records do not indicate, that he was stationed in Vietnam. Rather, the Veteran contends that he was on the ground in Vietnam. During his hearing, he further explained that en route from Nam Phong, Thailand to Iwakuni, Japan his aircraft, a C-130, stopped over in Da Nang, Vietnam. He reported that he knew he stopped in Da Nang, because he was told that the aircraft would first fly to Da Nang. He also remembered that it happened in August 1972, because it was when his wife had a miscarriage and he went on leave to see her. Service personnel records include a sea and air travel itinerary that shows that he departed Iwakuni, Japan and arrived in Nam Phong, Thailand in June 1972; however, this is the last entry.

The RO attempted to verify that the Veteran served in the Republic of Vietnam; however, the National Personnel Records Center (NPRC) was unable to determine whether or not the Veteran had in-country service in the Republic of Vietnam. See a reply from the NPRC dated in February 2010.

Military service is, however, to be determined based on all relevant evidence, with due application of the duty to assist, and the statutory and regulatory requirements to consider "all information and lay ... evidence of record." 38 U.S.C. § 5107(b); see also 38 C.F.R. § 3.102. *Capellan v. Peake*, 539 F.3d 1373, 1382 (Fed. Cir. 2008) (discussing 38 C.F.R. § 3.203 (2014)).

During his hearing, the Veteran claimed that in June 1972, he was deployed to Nam Phong, Thailand while the base was being set up for the "Easter Offensive" in Vietnam. He served as a weather forecaster and operated vans 24/7, including along the edge of the base. He also indicated that he made trips to Udorn Air Force Base and worked in an area where a perimeter fence was later installed in September. He described pictures he had at the hearing showing the close proximity of the perimeter fence to his living quarters. There was also a parking apron for C-130s nearby.

A review the Veteran's service personnel records show that he participated in combat support operations with Task Force Delta in Nam Phong, Thailand from June 7, 1972 to December 12, 1972. The Veteran has also identified this location as "MCAS Rose Garden". His military occupational specialty was aerology man and weather forecaster. The Veteran's DD 214 shows that his military decorations include the Vietnam Service Medal.

In an August 1989 notice of disagreement regarding another claim on appeal at the time, the Veteran reported that he worked close to the runway while stationed at Nam Phong, Thailand. He also reported that every two weeks he made trips to Udorn RTAFB.

In a July 2014 statement, B. Gouldsbury, reported that he served with the Veteran in Nam Phong, Thailand in 1972. He stated that they were both Marines assigned to Task Force Delta, MAG 15, MABS-15, Base Operations-Weather, resided in the same quarters, and worked in the same area along the perimeter fence of RTAFB in Nam Phong, Thailand-also known as MCAS Rose Garden. Mr. Gouldsbury claimed that he was granted service connection for a disease related to herbicide exposure based on his service at RTAF Nam Phong. In regard to their MOS, he stated that they were isolated from the main camp because of initial personnel shortages and worked on the perimeter as shown in a photograph he included with his statement.

The Veteran also included pictures from Task Force Delta Command Chronology and the Department of Defense showing thick vegetation being cleared away by Marine and Navy engineers to develop the base for Headquarters and Maintenance Squadron 15 and Marine Airforce Base Squadron 15 as

well as aerial views of the base. An associated article addressed the security considerations for Task Force Delta stationed in Nam Phong. Additionally, he submitted a DD Form 173 dated in September 1972 discussing the use of herbicides at Nam Phong during a meeting in Bangkok, Thailand and the procedures to be followed for obtaining approval. The Joint Message Form was addressed to the Task Force Delta at Nam Phong RTAFB, Thailand and stated that the use of herbicides must be tightly controlled and applied only within the confines of the base.

In the absence of any evidence which disproves the Veteran's assertions that his service included a layover in Da Nang, Vietnam in August 1972 and work along the perimeter at Udorn and Nam Phong RTAFBs, or renders such assertion non-credible, the Board finds the Veteran's assertions regarding herbicide exposure credible. In relevant part, 38 U.S.C.A. § 1154(a) requires that VA give "due consideration" to all pertinent medical and lay evidence in evaluating a claim for disability benefits. Davidson v. Shinseki, 581 F.3d 1313 (Fed. Cir. 2009). The United States Court of Appeals for the Federal Circuit (Federal Circuit) has held that "[l]ay evidence can be competent and sufficient to establish a diagnosis of a condition when (1) a layperson is competent to identify the medical condition, (2) the layperson is reporting a contemporaneous medical diagnosis, or (3) lay testimony describing symptoms at the time supports a later diagnosis by a medical professional." Jandreau v. Nicholson, 492 F.3d 1372, 1377 (Fed. Cir. 2007); see also Buchanan v. Nicholson, 451 F.3d 1331, 1337 (Fed. Cir. 2006) ('[T]he Board cannot determine that lay evidence lacks credibility merely because it is unaccompanied by contemporaneous medical evidence').

In the instant case, the Veteran is competent to report that his duties took him to, or near the perimeter at Udorn and Nam Phong RTAFB, and his reports are consistent with the circumstances of his service as an aerology man and weather forecaster. He has been consistent in his statements, including a prior statement dating back to September 1989 reporting frequent visits to Udorn RTAFB, and there is no explicit evidence to contradict his reports. Rather, the Veteran's service personnel records tend to corroborate his contentions.

Given the wealth of supporting documentation and photographs and statements provided by the Veteran and B. Gouldsbury, and viewing the evidence of record in a light most favorable to the appellant, the Board finds that the evidence as to whether the Veteran was exposed to herbicides is at least in equipoise. As such, the Board concedes the Veteran's exposure to herbicides during his active service.

A review of the medical evidence shows the Veteran was diagnosed as having prostate cancer in January 2010. As the Board has conceded exposure to herbicides in Thailand and in Vietnam, the Veteran's diagnosed prostate cancer is presumed to be associated with his in-service herbicide exposure. There is not of record the requisite clear and convincing evidence to rebut this presumption. As a result, the Board finds that the evidence supports a grant of service connection for prostate cancer on a presumptive basis as a result of herbicide exposure.

ORDER

Service connection for prostate cancer is granted.

MARJORIE A. AUER
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs

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