

Service Connection

Service connection may be granted for disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C.A. §§ 1110, 1131 (West 2014); 38 C.F.R. § 3.303(a) (2016). To establish a right to compensation for a present disability, a Veteran must show: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service—the so-called "nexus" requirement. Holton v. Shinseki, 557 F.3d 1362, 1366 (Fed. Cir. 2009) (quoting Shedden v. Principi, 381 F.3d 1163, 1167 (Fed. Cir. 2004)).

Service connection may be granted for any disease initially diagnosed after service 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).

For the showing of chronic disease in service, there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time. As lymphoma is a chronic disease for VA compensation purposes, if chronicity in service is not established, a showing of continuity of symptoms after discharge is required to support the claim. 38 C.F.R. §§ 3.303(b), 3.309; Walker v. Shinseki, 708 F.3d 1331 (Fed. Cir. 2013).

VA laws and regulations provide that, if a Veteran was exposed to Agent Orange during service, certain listed diseases are presumptively service-connected. 38 U.S.C.A. § 1116(a)(1); 38 C.F.R. § 3.309(e). A Veteran who "served in the Republic of Vietnam" between January 9, 1962 and May 7, 1975 is presumed to have been exposed during such service to Agent Orange. 38 U.S.C.A. § 1116(f); 38 C.F.R. § 3.307(a)(6)(iii). The listed diseases are: AL amyloidosis, chloracne or other acneform disease consistent with chloracne, Type II diabetes mellitus (adult-onset diabetes), Hodgkin's disease, ischemic heart disease, chronic B-cell leukemias, multiple myeloma, non-Hodgkin's lymphoma, Parkinson's disease, acute and subacute peripheral neuropathy, porphyria cutanea tarda, prostate cancer, respiratory cancers (cancer of the lung, bronchus, larynx or trachea); and soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma). In addition, the Secretary of VA has determined that there is no positive association between exposure to herbicides and any other condition for which the Secretary has not specifically determined that a presumption of service connection is warranted. See Notice, 59 Fed. Reg. 341-46 (1994); Notice, 61 Fed. Reg. 41, 442-49 (1996); Notice, 72 Fed. Reg. 32,395-32,407 (Jun. 12, 2007); Notice, 74 Fed. Reg. 21,258-21,260 (May 7, 2009); Notice, 75 Fed. Reg. 32540 (June 8, 2010).

The fact that a Veteran cannot establish entitlement to service connection on a presumptive basis does not preclude him from establishing entitlement on a direct incurrence or other basis. See 38 U.S.C.A. § 1113(b); 38 C.F.R. § 3.304(d) (the availability of service connection on a presumptive basis does not preclude consideration of service connection on a direct basis); Combee v. Brown, 34 F.3d 1039 (Fed. Cir. 1994) (Radiation Compensation Act does not preclude a veteran from establishing service connection with proof of actual direct causation).

At the outset, the Board notes that the Veteran does not claim, and the evidence does not reflect, that his disability is the result of combat with the enemy. Therefore, the combat provisions of 38 U.S.C.A. § 1154 are not applicable.

The Veteran contends his mantle cell lymphoma is related to exposure to Agent Orange during his service in Thailand. VA's Compensation Service has acknowledged exposure to tactical herbicides, such as Agent Orange, on a direct, occupational, or facts found basis for veterans with duty on military base perimeters in Thailand during the Vietnam era. See M21-1, Part IV, Subpart ii, Chapter 1, Section H, Topic 5. VA has determined that there was significant use of herbicides on the fenced-in perimeters of military bases in Thailand for the purpose of eliminating vegetation and ground cover for base security purposes as evidenced in a declassified Vietnam era Department of Defense (DOD) document titled, "Project CHECO Southeast Asia Report: Base Defense in Thailand." Id. 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. Id. This allows for presumptive service connection of the diseases associated with herbicide exposure. Id.

VA's Adjudication Procedure M21-1, Part IV, Subpart ii, Chapter 1, Section H, Topic 5, directs, in pertinent part, that if a veteran served in the U.S. Air Force during the Vietnam Era at one of the specified Royal Thai Air Force Bases (RTAFBs), including U-Tapao, as an Air Force security policeman, a security patrol dog handler, a member of the security police squadron, or in a capacity that otherwise placed them near the air base perimeter as shown by the evidence of



record, to include daily work duties, performance evaluation reports or other credible evidence, then herbicide exposure is to be conceded.

Service personnel records reveal that the Veteran served in the Air Force. He was stationed at the U-Tapao airfield base in Thailand during the period from December 1970 to November 1971. He served in the capacity of an aircraft electrical repairman. Personnel records reflect that his duties included preparing bombardment and tanker aircraft for strikes and refueling, servicing, and repairing aircraft, including troubleshooting, calibrating, and repairing electrical components; he performed bench checks, as well. Service personnel records indicate that the Veteran had unspecified assigned duties within the scope of field maintenance.



In statements, the Veteran reported that he frequently traveled the perimeter road of the airfield base. To this point, he submitted a map of the airfield base, which showed the close proximity of the airfield and runway to the perimeter of the airfield base.



The Board finds that the evidence of record demonstrates service connection for mantle cell lymphoma is warranted. In multiple written statements, the Veteran reported that while serving at the U-Tapao airfield base, he worked as an aircraft electrical repairman, fixing aircraft on the flight line. The Veteran reported that he performed such work in close proximity to the perimeter of the airfield base. He also reported that his duties required him to travel the perimeter roads. The Board finds the Veteran's statements and testimony to be credible as they are consistent with the circumstances of his service. See 38 U.S.C.A. § 1154(a). See also Caluza v. Brown, 7 Vet. App. 498 (1995). First, the Veteran's military occupational specialty as an aircraft electrical repairman required routine work near the perimeter of the airfield base and travel on the perimeter road. Second, the CHECO Report notes heavy use of herbicides at the perimeter of the base. That report is highly probative as it is an official record, generated with a specific view towards describing military bases in Thailand during the Vietnam Era.



The medical evidence of record confirms that the Veteran has mantle cell lymphoma. Medical literature submitted in support of the Veteran's claim indicates that mantle cell lymphoma is a sub-type of B-cell non-Hodgkin's lymphoma; B-cell leukemias and non-Hodgkin's lymphoma are both diseases that are presumptively associated with exposure to certain herbicide agents. 38 C.F.R. §§ 3.307(a), 3.309(e). See VA medical records dated 2008-2016 and a November 2015 letter from the Veteran's treating provider at the Louis Stokes Cleveland VA Medical Center; see also Leukemia & Lymphoma Society Mantle Cell Lymphoma Facts.

As there is probative, credible evidence that the Veteran was exposed to Agent Orange during active duty, service connection for mantle cell lymphoma can be awarded on a presumptive basis. Accordingly after resolving any reasonable doubt in the Veteran's favor, the claim of service connection for mantle cell lymphoma is granted. 38 U.S.C.A. § 5107(b); 38 C.F.R. § 3.102.

ORDER

Service connection for mantle cell lymphoma is granted.

GAYLE E. STROMMEN
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs

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