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On appeal from the
Department of Veterans Affairs Regional Office in St. Petersburg, Florida

THE ISSUES

1. Entitlement to service connection for coronary artery disease (CAD) status post-myocardial infarction with stent placement and right coronary artery (RCA) stenosis secondary due to exposure to herbicide agent.

2. Entitlement to service connection for an acquired psychiatric disorder, to include posttraumatic stress disorder (PTSD).

REPRESENTATION

Appellant represented by: Florida Department of Veterans' Affairs

WITNESS AT HEARING ON APPEAL

Appellant

ATTORNEY FOR THE BOARD

T. Azizi-Barcelo, Counsel

INTRODUCTION

The Veteran served on active duty from August 1966 to August 1970.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from rating decisions issued in February 2011 and October 2011 by a Department of Veterans Affairs (VA) Regional Office (RO), which denied the claims for service connection for CAD and PTSD.

In May 2016, the Veteran provided testimony at a Travel Board hearing before the undersigned Veterans Law Judge. A transcript of the hearing is of record.

A claim for service connection for a psychiatric disability is deemed to encompass all psychiatric diagnoses reasonably presented in the record. See Clemons v. Shinseki, 23 Vet. App. 1 (2009). Pursuant to Clemons, the Board has expanded the service connection claim for PTSD as reflected on the title page of this decision.

The claim for entitlement to service connection for an acquired psychiatric disorder is addressed in the REMAND portion of the decision below and is REMANDED to the Agency of Original Jurisdiction (AOJ).

FINDINGS OF FACT

1. The Veteran has a diagnosis of CAD and he served at the Nakhon Phanom Royal Thai Air Base (RTAFB) during the Vietnam era.

2. There is a balance of evidence on the question of whether the Veteran served near the perimeter of the Thai Air Force Base at which he was stationed, thereby exposing him to herbicide agents.

CONCLUSION OF LAW
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With the resolution of reasonable doubt in the Veteran's favor, ischemic heart disease, including CAD status post-myocardial infarction with stent placement and RCA stenosis, was incurred in service. 38 U.S.C.A. §§ 1101, 1110, 1112, 1116, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.303, 3.304, 3.307(a)(6), 3.309(e) (2016).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

Veterans Claims Assistance Act

The Veterans Clams Assistance Act of 2000 (VCAA) and implementing regulations impose obligations on VA to provide claimants with notice and assistance. 38 U.S.C.A. §§ 5103, 5103A; 38 C.F.R. § 3.159; Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Pub. L. No. 112-154, §§ 504, 505, 126 Stat. 1165, 1191-93. For the reasons explained below, the claim for entitlement to service connection for CAD, the only claim herein decided, is being granted, and discussion of the VCAA with regard to this matter is therefore unnecessary.

Service Connection

Service connection may be established for a disability resulting from disease or injury incurred in or aggravated by service. 38 U.S.C.A. §§ 1110, 1131; 38 C.F.R. § 3.303. Service connection means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service, or if preexisting service, was aggravated therein. 38 C.F.R. § 3.303(a). Service connection may 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).

To establish service connection for a disability, there must be competent evidence of the following: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship or nexus between the present disability and the disease or injury incurred or aggravated during service. Horn v. Shinseki, 25 Vet. App. 231, 236 (2010); Shedden, 381 F.3d at 1167; Gutierrez v. Principi, 19 Vet. App. 1, 5 (2004) (citing Hickson v. West, 12 Vet. App. 247, 253 (1999)). In many cases, medical evidence is required to meet the requirement that the evidence be "competent". However, when a condition may be diagnosed by its unique and readily identifiable features, the presence of the disorder is not a determination "medical in nature" and is capable of lay observation. Barr v. Nicholson, 21 Vet. App. 303, 309 (2007).

Service connection for certain chronic diseases, including cardiovascular disease, may be presumed to have been incurred in service by showing that the disease manifested itself to a degree of 10 percent or more within one year (three years for active tuberculous disease and Hansen's disease; seven years for multiple sclerosis) from the date of separation from service. 38 U.S.C.A. §§ 1101, 1112; 38 C.F.R. §§ 3.307(a)(3), 3.309(a). Such a chronic disease is presumed under the law to have had its onset in service even though there is no evidence of that disease during the period of service. 38 C.F.R. § 3.307(a).

The term "chronic disease" refers to those diseases listed under section 1101(3) of the statute and section 3.309(a) of VA regulations. 38 U.S.C.A. § 1101(3); 38 C.F.R. § 3.309 (a); Walker v. Shinseki, 708 F.3d 1331, 1338 (Fed. Cir. 2013). For such diseases, the second and third elements of service connection may be established by demonstrating (1) that a condition was "noted" during service; (2) post-service continuity of symptoms; and (3) medical or, in certain circumstances, lay evidence of a link between the present disability and the continuity of symptoms. 38 C.F.R. § 3.303(b); see Walker, 708 F.3d at 1340.

If a chronic condition is noted during service or during the presumptive period, but the chronic condition is not "shown to be chronic, or where the diagnosis of chronicity may be legitimately questioned," i.e., "when the fact of chronicity in service is not adequately supported," then a showing of continuity of symptomatology after discharge is required to support a claim for disability compensation for the chronic disease. Proven continuity of symptomatology establishes the link, or nexus, between the current disease and serves as the evidentiary tool to confirm the existence of the chronic disease while in service or a presumptive period during which existence in service is presumed." Walker at 1336; 38 C.F.R. § 3.303(b).

In addition, a veteran who served in the Republic of Vietnam between January 9, 1962, and May 7, 1975, or in certain areas near the Demilitarized Zone in the Republic of Korea from April 1, 1968 to August 31, 1971 is presumed to have been exposed to certain designated herbicide agents (e.g., Agent Orange) during such service, absent affirmative evidence to the contrary. 38 U.S.C.A. § 1116 (f); 38 C.F.R. § 3.307 (a)(6)(iii). In the case of such a veteran, service connection based on herbicide exposure will be presumed for certain specified diseases, including ischemic heart disease, that become manifest to a compensable degree. 38 U.S.C.A. § 1116; 38 C.F.R. §§ 3.307 (a)(6), 3.309(e).

VA's Compensation and Pension (C&P) Service has determined that special consideration of herbicide exposure on a factual or facts-found basis should be extended to Veterans whose duties placed them on or near the perimeters of Thailand bases when a veteran with service in Thailand during the Vietnam Era claims service connection for disability based on herbicide exposure. See VA Adjudication Manual, M21-1, Part IV, Subpart ii, Chapter 2, Section C; see also C&P Bulletin May 2010. VA has determined that there was significant use of herbicides on the fenced-in perimeters of bases in Thailand intended to eliminate 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." Such claimants must have served with the U.S. Air Force or Army in Thailand during the Vietnam Era at one of the RTAFBs at U-Tapao, Ubon, Nakhon Phanom, Udorn, Takhli, Korat, or Don Muang during the period from February 28, 1961, to May 7, 1975. Additionally, such claimants must have performed duties as a security policeman, security patrol dog handler, member of the security police squadron, or otherwise have served near the air base perimeter as shown by evidence of daily work duties, performance evaluation reports, or other credible evidence.

In rendering a decision on appeal, the Board must analyze the credibility and probative value of the evidence, account for the evidence which it finds to be persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant. See Gabrielson v. Brown, 7 Vet. App. 36, 39-40 (1994); Gilbert v. Derwinski, 1 Vet. App. 49, 57 (1990). When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the benefit of the doubt shall be given to the claimant. 38 U.S.C.A. § 5107(b). When a reasonable doubt arises regarding service origin, such doubt will be resolved in the favor of the claimant. Reasonable doubt is doubt which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. 38 C.F.R. § 3.102. The question is whether the evidence supports the claim or is in relative equipoise, with the claimant prevailing in either event, or whether a fair preponderance of the evidence is against the claim, in which event the claim must be denied. See Gilbert, 1 Vet. App. at 54.

The Veteran asserts that service connection is warranted for heart disease due to exposure to Agent Orange during his active service in Thailand.

Medical evidence of record contains evidence of a diagnosis of CAD status post-myocardial infarction with stent placement and RCA. Specifically, on VA examination in May 2011, the examiner noted a history myocardial infarction with stent in 2005, with additional stent in 2006, currently under treatment with medication. Thus, the central issue that the Board must resolve is whether the Veteran was exposed to a herbicide agent during his service in Thailand in order to award presumptive service connection for the disabilities.

Service personnel records confirm that the Veteran was stationed at Nakhon Phanom RTAFB from September 1969 to August 1970. His DD 214 lists his occupational specialty as Morse code interceptor. The Veteran's service records do not clearly show that he was exposed to a herbicide agent while on active duty. However, in written statements and at hearing, he reported that his duties as a Morse code interceptor, while assigned to Detachment #3, 6994th Secret Squadron, he flew more than a 100 missions in an EC-47 aircraft over hostile territory in Laos between September 1969 to August 1970, for which he was awarded the Distinguished Flying Cross and the Air Medal. He asserted that he spent approximately two hours a day on the flight line, which he asserted was in close proximity to the perimeter of Nakhon Phanom RTAFB. In support of this contention, the Veteran submitted aerial maps and photos of the RTAFB, which he asserted show that the flight line was next to the base's perimeter. The Veteran's personnel records show that he completed 10 combat missions and was awarded Basic Air Crew Member Badge and Air Force Prefix "A", as well as The Air Medal.

Although the Veteran's service personnel records do not specifically confirm his service duties placed him in close proximity to the base perimeter of Nakhon Phanom RTAFB, the various statements provided by the Veteran over the course of the claim have been consistent and the Board finds no reason to question his veracity. As his testimony appears to be a sincere recollection of his duties in service, and as his claimed duties are generally consistent with the available personnel records, the evidence may be considered in balance on the question of whether his duties placed him near the air base perimeter. Resolving that question in favor of the Veteran, it is concluded the Veteran did, in fact, serve near the air base perimeter at the Thai air force base at which he served.

In sum, the evidence of record demonstrates the Veteran served at Nakhon Phanom RTAFB, within close proximity to the base perimeter where herbicide agents were sprayed, triggering the presumption of service connection for ischemic heart disease, or coronary artery disease, which was diagnosed in 2005 and for which the Veteran currently receives VA treatment. Therefore, service connection is warranted for these disabilities on a presumptive basis.

ORDER

Service connection for CAD status post-myocardial infarction with stent placement and RCA stenosis is granted.

REMAND

The Veteran contends that he suffers from PTSD due to the performance of his duties as a Morse code interceptor in service. Reportedly, while stationed in Thailand he flew more than a 100 missions in an EC-47 aircraft over hostile territory in Laos, Vietnam between September 1969 to August 1970. During those missions he would identify enemy radio transmissions and triangulate those positions with radar. Once identified, he would communicate the enemy location to forces on the ground to take appropriate action, including bombings. Reportedly, his actions during these missions resulted in North Vietnamese Army forces casualties, as well as collateral damage. The Veteran has also reported a second stressor due to daily briefings about antiaircraft artillery which could take down aircraft and made him fearful of being shot down and captured.

On VA mental health evaluation in September 2010, following an examination of the Veteran, the clinician noted it was very complicated to determine whether the Veteran had PTSD because while some symptoms could be attributed to PTSD, these could also be related to the Veteran's significant alcohol dependence or his mood disorder. The clinician diagnosed alcohol dependence, and substance induced mood disorder versus major depressive disorder, rule out PTSD.

In support of his claim, the Veteran submitted a statement from his VA treating physician who noted that although the Veteran had not been diagnosed with PTSD, he exhibited many symptoms of PTSD, including depression, which in her opinion, occurred during the Veteran's military service. The opinion, however, is not accompanied by adequate rationale and, therefore, is insufficient reason or basis to grant his claim. Stefl v. Nicholson, 21 Vet. App. 120, 124 (2007).

On VA PTSD examination in May 2011, the examiner noted the Veteran's reports of feeling badly about having contributed to civilian causalities during the performance of his duties in service. The examiner determined that his description of the stressor did not include the criterion of having experienced, witnessed, or being confronted with an event or circumstances that involved actual or threatened death, or serious injury or a threat to the physical integrity of the Veteran or others, nor did the Veteran's response to the event or circumstances involve a psychological or psycho physiological state of fear helplessness or horror. The examiner concluded that the Veteran did not satisfy the DSM IV diagnostic criteria for PTSD. The examiner diagnosed alcohol dependence and depressive disorder, not otherwise specified (NOS), as opposed to PTSD resulting from fear of hostile military or terrorist activity. Although the examiner noted that the Veteran's reported symptoms were related to the reported stressor, it is unclear whether a psychiatric disorder is related to service. Moreover, the examiner did not address the diagnosis of depressive disorder, NOS, and its relation, if any, to service.

The Board is aware that the Veteran initially characterized his claim as seeking service connection for PTSD specifically. Nonetheless, under Clemons v. Shinseki, 23 Vet. App. 1 (2009), in instances where the veteran has specifically requested service connection for PTSD and the evidence suggests other possible psychiatric diagnoses, the veteran's claim may not be construed narrowly as a claim for service connection for PTSD, but rather, should be considered more broadly as a claim for a psychiatric disorder. Given the VA examiner's diagnosis of depressive disorder, NOS, the Veteran's claim must be expanded to include consideration of service connection for PTSD, but also for other possible psychiatric conditions, to include depressive disorder. Therefore, the Board finds that a new VA examination must be obtained.

On remand, ongoing relevant treatment records should be obtained.

Accordingly, the case is REMANDED for the following action:

1. Request the Veteran to identify all medical providers (VA and private) from whom he has received mental health treatment. After securing the necessary release, the AOJ should request any relevant records identified. In addition, obtain updated VA treatment. If any requested records are unavailable, the Veteran should be notified of such.

2. After the above has been completed to the extent possible, schedule the Veteran for a VA psychiatric disability examination to address his claim for service connection for an acquired psychiatric disorder, to include PTSD. The claims file must be provided to the examiner for review in conjunction with the examination. After review of the file and examination of the Veteran, the examiner should offer an opinion as to the following:

a) The examiner should identify all psychiatric disorders found to be present, to include PTSD.

The examiner should specifically determine if the Veteran meets the diagnostic criteria for PTSD.

If PTSD is diagnosed, the examiner should identify the specific stressor or stressors (to include fear of hostile military or terrorist activity) that support that diagnosis. If the Veteran does not meet the criteria for PTSD, the examiner should explicitly discuss which criteria for diagnosis are missing (under either DSM-IV or DSM-V criteria).

b) Determine whether it is at least as likely as not (a probability of 50 percent or greater) that any current psychiatric disorder had onset during service, or is otherwise related to any aspect of the Veteran's service, including his service in Thailand during the Vietnam War.

The rationale for all opinions rendered must be provided.

3. Review the electronic claims folder and ensure that all of the foregoing development actions have been conducted and completed in full. If any development is incomplete, appropriate corrective action is to be implemented.

4. Finally, readjudicate the claim. If any benefit sought on appeal remains denied, furnish the Veteran and his representative a supplemental statement of the case and provide an appropriate period of time to respond. The case should then be returned to the Board for further appellate review, if 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 2014).

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KATHLEEN K. GALLAGHER
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs

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