



In addition, the Board notes that in a letter dated April 15, 2002, the RO provided the veteran with notice concerning evidence necessary to establish service connection and told him that if he did not respond to the letter within 30 days it would make a decision based on the evidence of record. The Board observes that in a decision promulgated on September 22, 2003, *Paralyzed Veterans of America v. Secretary of Veterans Affairs*, No. 02-7007, -7008, -7009, -7010 (Fed. Cir. Sept. 22, 2003), the United States Court of Appeals for the Federal Circuit (Federal Circuit) invalidated the 30-day response period contained in 38 C.F.R. § 3.159(b)(1) as inconsistent with 38 U.S.C. § 5103(b)(1). The Federal Circuit drew a conclusion similar to the one reached in *Disabled American Veterans v. Secretary of Veterans Affairs*, 327 F.3d 1339, 1348 (Fed. Cir. 2003), which reviewed a related Board regulation, 38 C.F.R. § 19.9. The Federal Circuit found that the 30-day period provided in 38 C.F.R. § 3.159(b)(1) for response to the 38 U.S.C. § 5103 duty to notify is misleading and detrimental to claimants whose claims are prematurely denied short of the statutory one-year period provided for response. Therefore, since this case is being remanded for additional development and to cure a procedural defect, the RO must take this opportunity to inform the appellant that notwithstanding the information previously provided, a full year is allowed to respond to notice provided pursuant to 38 U.S.C. § 5103.

Review of the record shows that the basis for the RO's denial of the service connection claim as explained in the July 2002 statement of the case was that diabetes was not shown in service or to a degree of 10 percent within a year following service and that as the evidence did not show the veteran had service in Vietnam as defined by 38 C.F.R. § 3.307(a)(6), he was not entitled to service connection on a presumptive basis as provided by that regulation. At the April 2003 hearing, the veteran testified that he believes he may have been exposed to herbicides either from a leaking drum or from spraying of what he thought might be herbicides on the eastern side of the air base at the time he lived there. The veteran should be notified that to substantiate his claim he should submit or identify corroborating evidence as to the substance to which he was exposed along with medical evidence that his exposure to that substance is causally related to his current Type II diabetes mellitus.

To ensure that VA has met its duty to assist the claimant in developing the facts pertinent to the claim and to ensure full compliance with due process requirements, the case is REMANDED to the RO for the following actions:

1. The RO must review the claims file and ensure that all statutory notice and assistance obligations have been satisfied in accordance with the recent decision in *Paralyzed Veterans of America v. Secretary of Veterans Affairs*, No. 02-7007, -7008, -7009, -7010 (Fed. Cir. Sept. 22, 2003), including 38 U.S.C.A. §§ 5102, 5103 and 5103A (West 2002) and any other applicable legal precedent. This should include, but not be limited to, notice to the veteran that to substantiate his claim he should identify or submit evidence that conditions of his

service involved duty or visitation in the Republic of Vietnam or corroborating evidence as to the substance to which he was exposed while in service in Thailand and medical evidence that his exposure to that substance is causally related to his current Type II diabetes mellitus.

2. The RO should attempt to verify through official channels the use/spraying of Agent Orange (or other herbicide) at Ubon Airfield, Thailand, between May 1969 and December 1972. All efforts undertaken should be documented in the claims file.

3. The RO should obtain and associate with the claims file all VA outpatient records and any hospital summaries for the veteran dated from March 2002 to the present.

4. After accomplishment of any additional development deemed necessary, including VA examination and medical opinion, if warranted, the RO, with consideration of evidence it received in March 2003, along with all other evidence added to the record, should readjudicate entitlement to service connection for Type II diabetes mellitus, to include as due to

exposure to herbicides. If the benefit sought on appeal is not granted to the veteran's satisfaction, the RO should provide the veteran with a supplemental statement of the case that addresses all evidence added to the record since its July 2002 statement of the case, and the veteran and his representative should be provided an appropriate opportunity to respond.

Thereafter, the case should be returned to the Board, if in order. The Board intimates no opinion as to the ultimate outcome of this case. The veteran need take no action until otherwise notified by the RO.

The veteran has the right to submit additional evidence and argument on the matter or matters the Board has remanded to the RO. *Kutscherousky v. West*, 12 Vet. App. 369 (1999).

This case must be afforded expeditious treatment by the RO. 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 The Veterans' Benefits Improvements Act of 1994, Pub. L. No. 103-446, § 302, 108 Stat. 4645, 4658 (1994), 38 U.S.C.A. § 5101 (West 2002) (Historical and Statutory Notes). In addition, VBA's Adjudication Procedure Manual, M21-1, Part IV, directs the ROs to provide expeditious handling of all cases that have been remanded by the Board

and the Court. See M21-1, Part IV, paras. 8.44-8.45 and 38.02-38.03.

BARBARA B. COPELAND  
Veterans Law Judge, Board of Veterans' Appeals

Under 38 U.S.C.A. § 7252 (West 2002), only a decision of the Board of Veterans' Appeals is appealable to the United States Court of Appeals for Veterans Claims. This remand is in the nature of a preliminary order and does not constitute a decision of the Board on the merits of your appeal.  
38 C.F.R. § 20.1100(b) (2002).