



## CONCLUSION OF LAW

Type II diabetes mellitus was incurred in service. 38 U.S.C.A. §§ 1110, 1116 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.313 (2002).

## REASONS AND BASES FOR FINDINGS AND CONCLUSION

The Board is satisfied that all relevant facts regarding the matters decided below have been properly developed and no further assistance to the veteran is required in order to comply with the duty to notify and assist. See 38 U.S.C.A. § 5103, 5103A (West 2002); 38 C.F.R. § 3.159 (2003). In any event, based on the favorable decision discussed below, any failure in VA's duty to notify and assist the veteran regarding his claim for service connection for Type II diabetes mellitus would be harmless error. See *Bernard v. Brown*, 4 Vet. App. 384 (1993).

### Factual Background

The veteran served on active duty in the Air Force from May 1956 to May 1976. Records reflect that the veteran was awarded the Vietnam Service Medal based on service in Thailand from March 1966 to February 1967. During this period, his primary military occupational specialty was that of an aircraft technician.

Service medical records are negative for diabetes mellitus. Post-service medical records reflect treatment for a variety of conditions. The first medical evidence reflecting a diagnosis of diabetes mellitus is dated in 1998. Private medical records dated in June 1998 from M. G., MD, reflect that the veteran complained of polydipsia and polyuria, and that subsequent blood tests showed high levels of glucose. Private medical records dated from July 1998 to July 2001 reflect treatment for Type II diabetes.

A September 2000 history and physical completed by F.C.W., MD reflects that the veteran gave a history of diabetes mellitus for the past two years. In a December 2001 statement, Dr. P. indicated that the veteran had visual and cardiovascular symptoms from diabetes mellitus.

In March 2001, the veteran submitted a Veteran's Application for Compensation and/or Pension. In this form, he stated that he did not serve in Vietnam.

In December 2001, the veteran submitted a claim for service connection for Type II diabetes mellitus. By a letter dated in March 2002, he asserted that he first had visual symptoms in 1968 or 1969. By a letter dated in September 2002, he stated that he did not go to Vietnam in service. He contended that he was exposed to Agent Orange during service when he worked on planes that returned from Vietnam. He reiterated his contention in a December 2002 statement.

In March 2003, the veteran submitted original travel documents and vouchers reflecting that he traveled from California to Thailand during service in early March 1966, via Clark Air Force Base (AFB), in the Philippine Islands. Such documents do not reflect that he was in Vietnam. The veteran stated that on that trip in March 1966, his plane landed in Vietnam prior to arriving in Thailand. He said that when he filed his travel voucher for that trip, he was told not to indicate that he landed in Vietnam. He believed because of problems regarding combat pay. He said that the doors of his plane were open while it was in Vietnam.

In January 2004, the Board remanded the case to the RO for a Board hearing. A Board hearing was subsequently scheduled in May 2004. By a letter dated in May 2004, the veteran requested that his hearing be rescheduled.

### Analysis

Service incurrence will be presumed for certain chronic diseases, including diabetes mellitus, if manifest to a compensable degree within the year after active service. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113 (West 2002); 38 C.F.R. §§ 3.307, 3.309 (2003).

A veteran who served in the Republic of Vietnam between January 9, 1962 and May 7, 1975 is presumed to have been exposed to certain herbicide agents (e.g., Agent Orange) during such service. In the case of such a veteran, service connection based on herbicide exposure will be presumed for certain specified diseases, including Type II diabetes that become manifest to a compensable degree within a year after last Vietnam service. 38 U.S.C.A. § 1116 (West 2002); 38 C.F.R. §§ 3.307(a)(6), 3.309(e) (2003).

Service in Vietnam includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam. 38 C.F.R. §§ 3.307(a)(6)(iii), 3.313(a) (2003). Service connection based on herbicide exposure may also be established with proof of actual direct causation, although such carries a very difficult burden of proof. See *Combee v. Brown*, 34 F.3d 1039 (Fed. Cir. 1994).

Service medical records are negative for diabetes mellitus, and the first post-service medical evidence of a diagnosis of diabetes mellitus is dated in the late 1990s, more than 20 years after separation from service. While the evidence demonstrates that the veteran currently has Type II diabetes mellitus, there is no medical evidence linking such disease directly to service.

The veteran served in the Air Force, and was awarded the Vietnam Service Medal for service in Thailand from March 1966 to February 1967. The veteran has provided statements that on his flight from California to Thailand in March 1966, his plane landed in Vietnam and the doors of the plane were opened. Although the original travel documents submitted by the veteran do not reflect that his plane landed in Vietnam while en route to Thailand, one of the normal flight paths to Thailand from California included stops in the Philippine Islands and Vietnam. The Board finds the veteran's statements both competent and credible. Hence, the Board finds that the evidence is in equipoise on the question of whether the veteran had "service in Vietnam" as defined by regulation, and he is therefore entitled to the presumption that he was exposed to herbicide agents during service in 1966. See 38 U.S.C.A. § 5107(b) (West 2002); 38 C.F.R. §§ 3.307(a)(6)(iii), 3.313(a) (2003).

As the veteran did have "service in Vietnam", the Agent Orange presumption of service connection for Type II diabetes mellitus applies to this case. Hence, with consideration of the benefit-of-the doubt rule (38 U.S.C.A. § 5107(b)), the Board finds that service connection for Type II diabetes mellitus is warranted on a presumptive basis. 38 U.S.C.A. § 1116 (West 2002); 38 C.F.R. §§ 3.307(a)(6), 3.309(e) (2003).

ORDER

Service connection for Type II diabetes mellitus is granted.

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ROBERT P. REGAN  
Veterans Law Judge, Board of Veterans' Appeals