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On appeal from the  
Department of Veterans Affairs Regional Office in St. Louis,  
Missouri

THE ISSUE

Entitlement to service connection for type 2 diabetes  
mellitus claimed as a residual of Agent Orange exposure  
during service.

REPRESENTATION

Appellant represented by:        Disabled American Veterans

WITNESS AT HEARING ON APPEAL

Appellant

ATTORNEY FOR THE BOARD

D. Havelka, Counsel

INTRODUCTION

The veteran's active military service extended from August  
1966 to September 1986. This matter comes properly before  
the Board of Veterans' Appeals (Board) on appeal from a  
rating decision the Department of Veterans Affairs (VA)  
Regional office in St. Louis, Missouri (RO).

FINDINGS OF FACT

1. The veteran has a current diagnosis of type 2 diabetes  
mellitus.
2. The veteran had active military service in the Republic  
of Vietnam during the Vietnam era.

CONCLUSION OF LAW

Type 2 diabetes mellitus was incurred in active military  
service as a result of exposure to Agent Orange. 38 U.S.C.A.

§§ 101(16), 1110, 1116, 1131, 5103A, 5107 (West 2002);  
38 C.F.R. §§ 3.303, 3.307, 3.309 (2004).

## REASONS AND BASES FOR FINDINGS AND CONCLUSION

### I. Veterans Claims Assistance Act of 2000

On November 9, 2000, the President signed into law the Veterans Claims Assistance Act of 2000 (VCAA). See 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5106, 5107, 5126 (West 2002); 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326 (2004). This law eliminated the concept of a well-grounded claim, redefined the obligations of VA with respect to the duty to assist, and imposed on VA certain notification requirements. Without deciding whether the notice and development requirements of VCAA have been satisfied in the present case, it is the Board's conclusion that the new law does not preclude the Board from adjudicating the veteran's claim for service connection for diabetes mellitus. This is so because the Board is taking action favorable to the veteran by granting service connection; a decision at this point poses no risk of prejudice to the veteran.

### II. Service Connection for Diabetes Mellitus

The veteran claims entitlement to service connection diabetes mellitus as a residual of exposure to Agent Orange during service.

Generally, service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by active military service. 38 U.S.C.A. §§ 101(16), 1110, 1131. In addition, 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). Moreover, in the case of diabetes mellitus, service connection may be granted if such disease is manifested in service, or manifested to a compensable degree within one year following separation from service. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113, 1131 (West 2002); 38 C.F.R. §§ 3.307, 3.309.

Further, VA regulations provide that, if a veteran was exposed to an herbicide agent during active service, presumptive service connection is warranted for the following disorders: chloracne or other acneform disease consistent with chloracne; type 2 diabetes; Hodgkin's disease; Chronic lymphocytic leukemia (CLL); multiple myeloma; Non-Hodgkin's lymphoma; 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). Presumptive service connection for these disorders as a result of Agent Orange exposure is

warranted if the requirements of Sec. 3.307(a)(6) are met.  
38 C.F.R. § 3.309(e) (emphasis added).

The governing law provides that a "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 U.S.C.A. § 1116(f).

Type 2 diabetes mellitus disease, may be presumed to have been incurred during active military service as a result of exposure to Agent Orange if it is manifest to a degree of 10 percent at any time after which the veteran was exposed to Agent Orange during active service. 38 C.F.R. § 3.307(a)(6)(ii).

In this case the veteran avers that he developed type 2 diabetes mellitus as a result of exposure to Agent Orange in service. In January 2000, a VA Agent Orange protocol examination of the veteran was conducted; the diagnosis rendered was "diabetes type II without complication." In May 2001, another VA examination of the veteran was conducted and confirmed the diagnosis of "non-insulin-dependent diabetes."

That the veteran has a current diagnosis of type 2 diabetes mellitus is not at issue. Rather, the difficulty with the veteran's claim is whether he served in Vietnam during the specified period of time so that he is presumed to have been exposed to Agent Orange during service.

The evidence of record reveals that the veteran retired after 20 years of service in the United States Air Force. His active service extended from August 1966 to September 1986. Review of his discharge papers, DD 214, reveals that the veteran was awarded the Vietnam Service Medal during service. However, the Board notes that the award of this medal does not necessarily prove service in Vietnam within the meaning of the controlling law. 38 U.S.C.A. § 1116(f). Specifically, the Vietnam Service Medal was awarded for service in Vietnam, Thailand, Laos, and

Cambodia. Since the veteran served in the Air Force, and there were large airbases in Thailand at this period of time, the award of the Vietnam Service Medal alone, without any supporting documentation, does not necessarily establish service in the Republic of Vietnam during the Vietnam era.

In the present case, the veteran has submitted written statements and hearing testimony that he served as a airplane mechanic at Clark Air Force Base in the Philippines and that he was sent on temporary duty to Vietnam. Review of service

personnel records obtained by the RO reveals that the veteran was stationed at Clark Air Force Base, Philippines from approximately November 1968 to May 1970. Another service personnel record reveals that the veteran completed 53 days of service in "Southeast Asia" from May to July 1969. This supports the veteran's claims that he was sent on temporary duty to Southeast Asia, but it does not conclusively show that the duty was in Vietnam. However, the veteran has also submitted color photocopies of his military driver's license. Being a color copy, this document clearly shows the license and all of the various endorsements made upon it with multiple ink stamps in varying colors. The veteran's military driver's license clearly shows a stamped endorsement stating "DANANG AB [air base] VIETNAM." The Board believes that this endorsement would only have been made on the veteran's driver's license in person at the location specified. As such, this document, along with all the other evidence referred to above indicates that the veteran had a temporary duty assignment which resulted in him serving in the Republic of Vietnam during the Vietnam era. 38 U.S.C.A. § 1116(f).

The evidence supports a grant of service connection for diabetes mellitus. The veteran has a current medical diagnosis of type 2 diabetes mellitus. The evidence of record also indicates that the veteran served in the Republic of Vietnam during the Vietnam era and is therefore presumed to have been exposed to Agent Orange during service. As such presumptive service connection under the provisions of 38 C.F.R. § 3.309(e) is warranted.

#### ORDER

Service connection for type 2 diabetes mellitus due to Agent Orange exposure in service, is granted.

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JOY A. MCDONALD  
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs