



notify the claimant and representative, if represented, of any information and evidence needed to substantiate and complete a claim. 38 U.S.C.A. §§ 5102 and 5103 (West 2002). Second, the VA has a duty to assist the claimant in obtaining evidence necessary to substantiate the claim. 38 U.S.C.A. § 5103A (West 2002).

The VA has promulgated revised regulations to implement these changes in the law. See 38 C.F.R §§ 3.102, 3.156(a), 3.159 and 3.326(a) (2004). The intended effect of the new regulations is to establish clear guidelines consistent with the intent of Congress regarding the timing and the scope of assistance VA will provide to a claimant who files a substantially complete application for VA benefits, or who attempts to reopen a previously denied claim.

As this decision represents a grant of the benefit sought on appeal, any defects with regard to VCAA notice are found to constitute harmless error to the veteran.

## II. Factual Background

Service medical records do not reflect complaints, findings or treatment associated with diabetes mellitus.

Service personnel records reflect that the veteran did not serve in the Republic of Vietnam. It is noted that, in February 1967, the veteran was transferred to Thailand, where he served until December 1967. The veteran has maintained that he stopped in Vietnam to change planes while en route to Thailand. He reported that he was in Vietnam for roughly four hours.

A May 2002 VA examination report noted that the veteran stated that he was in Vietnam in 1967. The veteran reported that he was diagnosed with diabetes mellitus in 1994. The examiner confirmed a diagnosis of diabetes mellitus. He indicated that, per his history, the veteran was exposed to Agent Orange in Vietnam. The examiner did not offer any other comments regarding the etiology of the veteran's diagnosis.

The veteran submitted a March 2003 statement from a retired Air Force Colonel. The Colonel indicated that, while he was on route to Thailand, in January 1967, he flew a commercial airline to Saigon and then went on to Bangkok. The veteran has stated that he was unable to obtain any documentation regarding his route to Thailand in February 1967. He has provided considerable detail about his flight and has also stated that he has "not been able to locate any archives that would have [his] travel orders in them, and [he had] been told that the manifests of the contract air carriers no longer exist."

## III. Criteria

Service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by service. 38 U.S.C.A. §§ 1110, 1131. Service connection for diabetes mellitus may be granted when such disorder is manifest to a compensable degree within one year of separation from service. 38 C.F.R. § 3.307. 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) (2004).

A veteran who served in the Republic of Vietnam during active service between January 9, 1962 and May 7, 1975 will be presumed to have been exposed, during such service, to an herbicide agent. See 38 C.F.R. § 3.307 (a)(6)(iii). Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes) shall be service connected if a veteran was exposed to an herbicide agent during service, and the requirements of 38 C.F.R. § 3.307 (a)(6) are met, even though there is no record of such disease during service.

When all the evidence is assembled, VA is responsible for determining whether the evidence supports the claim or is in relative equipoise, with the appellant prevailing in either event, or whether a preponderance of the evidence is against a claim, in which case, the claim is denied. *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990).

## IV. Analysis

The United States Court of Appeals for Veterans Claims (Court) has held that in order to establish service connection, there must be evidence of both a service-connected disease or injury and a present disability which is attributable to such disease or injury. See *Rabideau v. Derwinski*, 2 Vet. App. 141, 143 (1992).

The Court has also held that generally, to prove service connection, a claimant must submit (1) medical evidence of a current disability, (2) medical evidence, or in certain circumstances lay testimony, of in-service incurrence or aggravation of an injury or disease, and (3) medical evidence of a nexus between the current disability and the in-service disease or injury. See *Pond v. West*, 12 Vet. App. 341, 346 (1999); see also *Rose v. West*, 11 Vet. App. 169, 171 (1998).

The Board finds that it is clear from the evidence of record that the veteran has a current medical diagnosis of diabetes mellitus. See *Gilpin v. West*, 155 F.3d 1353 (Fed. Cir. 1998) (holding VA's interpretation of the provisions of 38 U.S.C.A. § 1110 to require evidence of a present disability to be consistent with congressional intent); *Rabideau v. Derwinski*, 2 Vet. App. 141 (1992) (the law limits entitlement for service-related diseases and injuries to cases where the underlying in-service incident resulted in a disability).

In this instance, there is no record of complaints, findings or treatment related to diabetes during service. In fact, the veteran reported at his May 2002 VA examination that he was first diagnosed with diabetes in 1994, fourteen years after separation from service. The May 2002 VA examiner does not offer any comments regarding the etiology of the veteran's diagnosed diabetes. Moreover, the Board notes that the veteran has not contended that his diabetes is directly related to service.

The veteran's contention is that his diabetes is the result of being exposed to Agent Orange. In this regard, the veteran must have service in the Republic of Vietnam between January 9, 1962 and May 7, 1975 to be afforded the presumption of herbicide exposure. The veteran contends his exposure occurred while on route to Thailand in February 1967. The veteran stated that he changed planes in Vietnam and spent a period of several hours in Vietnam at that time. It should be pointed out that the veteran seems credible in his reported statements. The Board notes that there is no requirement as to how long the veteran was in Vietnam; even a few hours of service in country is sufficient to establish the presumption of exposure. See *Veterans Benefits Administration Manual M21-1, Part III, Chapter 5, Par. 5.10(c)* (July 1, 2004). In this regard the Board notes that it was common practice at the time the veteran was being transferred to Thailand to allow for stopovers in Vietnam so military personnel could avail themselves of facilities and supplies that were not available to them in more remote postings such as Thailand. In addition, the Board finds the veteran's statements with regard to his travel at that time credible, particularly when viewed in conjunction with the statement from the retired Air Force Colonel who noted that his route to Thailand, in January 1967, took him through Vietnam. Accordingly, the Board finds that there is a tenable basis to find that the veteran did have a brief period of service in Vietnam in February 1967. Therefore, resolving all doubt in favor of the veteran, service connection for diabetes mellitus is granted on a presumptive basis due to Agent Orange exposure.

ORDER

Entitlement to service connection for diabetes mellitus is granted.

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JEFF MARTIN  
Veterans Law Judge, Board of Veterans' Appeals