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On appeal from the
Department of Veterans Affairs Regional Office in Cleveland,
Ohio

THE ISSUE

Entitlement to service connection for Hodgkin's disease and
or non-Hodgkin's lymphoma, claimed as resulting from exposure
to herbicides in Korea.

REPRESENTATION

Appellant represented by: Jewish War Veterans of the
United States

ATTORNEY FOR THE BOARD

Tresa M. Schlecht, Counsel

INTRODUCTION

The veteran had active service from October 1967 to May 1969.
This matter comes before the Board of Veterans' Appeals
(Board) on appeal from an August 1995 rating decision of the
Department of Veterans Affairs (VA) Regional Office (RO) in
Cleveland, Ohio, which denied a claim of entitlement to
service connection for non-Hodgkin's lymphoma, claimed as due
to exposure to Agent Orange in South Korea.

FINDINGS OF FACT

1. The veteran was stationed at Camp Casey, near the demilitarized zone (DMZ) between North Korea and South Korea, in 1968 and 1969.
2. Official records confirm that herbicide agents were sprayed in South Korea from the Civilian Control Line to the southern boundary of the DMZ during 1968 and 1969.
3. The positive evidence is in a state of equipoise with the negative evidence on the question of whether the veteran's was exposed to herbicide agents during his period of active military service.
4. Medical evidence of record shows that the veteran has been diagnosed with non-Hodgkin's lymphoma.

CONCLUSION OF LAW

Non-Hodgkin's lymphoma was incurred in the veteran's period of active military service. 38 U.S.C.A. §§ 1110, 1113, 1116, 5107(b) (West 1991 & Supp. 1998); 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309 (1998).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

Generally, service connection may be granted for disability resulting from disease or injury incurred in or aggravated by service. 38 U.S.C.A. § 1110; 38 C.F.R. § 3.303. In addition, service connection may be granted for any disease diagnosed after discharge, when all of the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

Diseases defined by regulation as associated with exposure to herbicide agents will be considered to have been incurred in service, under circumstances specified by statute and regulations, even though there is no evidence of such disease during the period of service. 38 C.F.R. § 3.309(e). Non-Hodgkin's lymphoma is among the diseases which may be presumed service-connected if a veteran was exposed to an

herbicide agent during active military, naval, or air service, provided further that the rebuttable presumption provisions of 38 C.F.R. § 3.307 are met. 38 C.F.R. § 3.309(e). The veteran must have been exposed to one of the herbicides specified by regulation. 38 C.F.R. § 3.307(a)(6). If a veteran had service in the Republic of Vietnam, exposure to herbicide may be presumed. Veterans who served outside the Republic of Vietnam must establish exposure to one of the specified herbicides. Compare 38 C.F.R. § 3.309(e) with 38 C.F.R. § 3.307(a)(6)(iii).

In this case, the veteran had active service from October 1967 to May 1969. For a period of time in 1968 and 1969, the veteran was stationed in Korea, according to his official military personnel record, DA Form 20. The DA Form 20 reflects that the veteran was a member of Company C, 7th Medical Battalion, 7th Infantry Division. Although the DA Form 20 does not reflect the location at which this unit was stationed, a fellow servicemember, M.R.M., M.D., has provided an October 1996 statement, in which he states that he was the general medical officer for the 7th Medical Battalion, stationed at Camp Casey, Tongduchon, Korea. The former servicemember provided a copy of a booklet apparently entitled, "camp casey, korea (sic)," dated in August 1968. A copy of one of the pages from that booklet includes a picture of the veteran.

The veteran has provided numerous post-service private and VA medical records which reflect that the veteran has been treated for non-Hodgkin's lymphoma, including treatment of a recurrence of non-Hodgkin's lymphoma following remission.

An official letter from the Department of the Army to Senator John Glenn, dated in May 1996, reflects that official records show use of 21,000 gallons of Agent Orange in Korea in 1968 and 1969 in the area of the DMZ. This letter also states that Camp Casey was located in the area of the DMZ.

A letter from the Director, United States Armed Services Center for Research of Unit Records (USASCRUR), (formerly the United States Army and Joint Services Environmental Support Group, ESG), to VA dated in February 1998 also confirms use of Agent Orange in Korea in 1968 and 1969, and confirms that

Camp Casey was located near the DMZ.

The evidence of record also includes a copy of an unidentified report, which appears to have been prepared by a service department within the Department of Defense, titled, "Vegetation Control Program CY 1968," which reflects that a program for control of vegetation near the DMZ by use of herbicide defoliants was approved in 1967. Shipment to Korea of materials necessary to accomplish the program goals began in early 1968. The report reflects that herbicides were to be applied from the Civilian Control Line in South Korea to the southern border of the DMZ, with priority applications in the vicinity of roads and tactically significant areas.

Neither the governing statutory provision, 38 U.S.C.A. § 1116, nor the regulations specify what evidence a veteran who did not serve in Vietnam must provide in order to establish exposure to herbicide agents. Official responses to VA from the Department of the Army Medical Research and Material Command, dated in June 1995, and from the Army Chemical and Biological Defense Command, dated in August 1995, make it clear that there are no specific records of exposure available for a particular veteran unless the veteran was enrolled as a medical volunteer in specific medical research. There is no record that the veteran participated in any medical research regarding effects of herbicides. There is no evidence that there are any other sources of official records which might show whether the veteran was individually exposed to herbicide agents used in South Korea while he was stationed there.

There is no requirement, in either the statute or the regulation, that the veteran establish the method of exposure, such as whether exposure was through ingestion, skin contact, or inhalation, nor is there a requirement that the veteran establish a particular level of exposure or length of exposure. Rather, the regulation only states that "[I]f a veteran was exposed to an herbicide agent during active . . . service, the following diseases shall be service-connected if the requirements of § 3.307(a)(6) (which defines the herbicide agents covered under the statute) are met"

In this case, the veteran has established that he was stationed in an area where herbicide agents were used. Moreover, the evidence clearly reflects that herbicide agents were used during the relevant time period when the veteran was stationed at that location. The official evidence also shows that the herbicides used in South Korea were also used in the Republic of Vietnam and are among the herbicide agents specified in the requirements of 38 C.F.R. § 3.307(a)(6). The evidence further reflects that approximately 21,000 gallons of herbicide were used in the area near the South Korea side of the DMZ, where the veteran was stationed, during the relevant period, that is, while the veteran was there.

In this particular case, it does not appear that there are any additional official records available which may assist in determining whether the veteran was actually individually exposed to herbicides in service, or, if so, what his level of exposure might have been. However, given the official confirmation of amount of herbicide used, the locations covered with defoliant, and the evidence as to where the veteran was stationed, the Board believes that the positive and the negative evidence as to whether the veteran actually incurred exposure to a herbicide in this particular case is at least in equipoise.

Where the evidence that the veteran was exposed to a herbicide is in equipoise, reasonable doubt as to exposure must be resolved in the veteran's favor. 38 U.S.C.A. § 5107(b). Having resolved doubt as to exposure in the veteran's favor, the presumption that the veteran's exposure was etiologically related to post-service development of non-Hodgkin's lymphoma is applicable. With application of the presumption, the Board finds that the veteran incurred non-Hodgkin's lymphoma in service or as a result of service.

ORDER

The appeal is granted, subject to the laws and regulations governing the award of monetary benefits.

ALAN S. PEEVY
Member, Board of Veterans' Appeals

- 4 -

- 5 -