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Decision Date: 03/11/14 Archive Date: 03/20/14

DOCKET NO. 11-19 894) DATE
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On appeal from the
Department of Veterans Affairs Regional Office in Honolulu, Hawaii

THE ISSUES

1. Entitlement to service connection for Type II diabetes mellitus.

2. Entitlement to service connection for diabetic peripheral neuropathy of the right upper extremity.

3. Entitlement to service connection for diabetic neuropathy of the left upper extremity.

4. Entitlement to service connection for diabetic retinopathy.

REPRESENTATION

Appellant represented by: Military Order of the Purple Heart of the U.S.A.

ATTORNEY FOR THE BOARD

J. Meawad, Counsel

INTRODUCTION

This appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c) (2011). 38 U.S.C.A. § 7107(a)(2) (West 2002).

The Veteran served on active duty from January 1955 to February 1967.

This matter is before the Board of Veterans' Appeals (Board) on appeal of a February 2010 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in Honolulu, Hawaii.

In June 2012, the Board reopened the claims for service connection for diabetes mellitus and hearing loss; granted service connection for hearing loss; and denied service connection for a prostate disorder. The remaining issues were remanded for further development.
In September 2013, the Board again remanded the case for further development.

The issues of service connection for erectile dysfunction, diabetic peripheral neuropathy of the right lower extremity and diabetic neuropathy of the left lower extremity have been raised by the record, but have not been adjudicated by the Agency of Original Jurisdiction (AOJ). Therefore, the Board does not have jurisdiction over them, and they are referred to the AOJ for appropriate action.

FINDINGS OF FACT

1. Resolving doubt in the Veteran's favor, diabetes mellitus had its onset during active service.

2. Diabetic peripheral neuropathy of the right upper extremity was caused by service-connected diabetes mellitus.

3. Diabetic peripheral neuropathy of the left upper extremity was caused by service-connected diabetes mellitus.

4. Diabetic retinopathy has not been shown during the pendency of the appeal.

CONCLUSIONS OF LAW

1. The criteria for service connection for diabetes mellitus have been met. 38 U.S.C.A. §§ 1101, 1110, 1116, 5107(b) (West 2002); 38 C.F.R. §§ 3.102, 3.159, 3.303, 3.307, 3.309 (2013).

2. The criteria for service connection for diabetic peripheral neuropathy of the right upper extremity have been met. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2013).

3. The criteria for service connection for diabetic peripheral neuropathy of the left upper extremity have been met. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2013).

4. The criteria for entitlement to service connection for diabetic retinopathy have not been met. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. §§ 3.102, 3.159, 3.303, 3.304 (2013).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

I. Duties to Notify and Assist

Regarding the claims for diabetes mellitus, diabetic peripheral neuropathy of the right upper extremity, and diabetic neuropathy of the left upper extremity, the Board is granting in full the

benefit sought on appeal. Accordingly, any error committed with respect to either the duty to notify or the duty to assist was harmless and will not be further discussed.

Regarding the remaining claim for diabetic retinopathy, April 2008, August 2009, and July 2012 letters satisfied the duty to notify provisions. 38 U.S.C.A. § 5103(a); Quartuccio v. Principi, 16 Vet. App. 183, 187 (2002); 38 C.F.R. § 3.159(b) (1). These letters also notified the Veteran of regulations pertinent to the establishment of an effective date and of the disability rating. Dingess/Hartman v. Nicholson, 19 Vet. App. 473 (2006). The Veteran was informed of the need to show the impact of disabilities on daily life and occupational functioning. Vazquez-Flores v. Peake, 22 Vet. App. 37 (2008), rev'd in part sub nom. Vazquez-Flores v. Shinseki, 580 F.3d 1270 (Fed. Cir. 2009). The claim was subsequently readjudicated, most recently in a December 2013 supplemental statement of the case. Mayfield v. Nicholson, 444 F.3d 1328 (Fed. Cir. 2006).

In any event, the Veteran has neither alleged nor demonstrated any prejudice with regard to the content or timing of the notices. See Shinseki v. Sanders, 556 U.S. 396 (2009) (reversing prior case law imposing a presumption of prejudice on any notice deficiency, and clarifying that the burden of showing that an error is harmful, or prejudicial, normally falls upon the party attacking the agency's determination); see also Mayfield v. Nicholson, 444 F.3d 1328, 1333-34 (Fed. Cir. 2006).

The Veteran's service treatment records, VA medical treatment records, and private treatment records have been obtained. 38 U.S.C.A. § 5103A, 38 C.F.R. § 3.159. The Veteran has not indicated, and the record does not contain evidence, that he is in receipt of disability benefits from the Social Security Administration. 38 C.F.R. § 3.159 (c) (2). A VA examination was conducted in November 2013; the Veteran has not argued, and the record does not reflect, that this examination was inadequate for rating purposes. Barr v. Nicholson, 21 Vet. App. 303, 307 (2007); 38 C.F.R. § 3.159(c)(4). As the report of the VA examination is based on the Veteran's medical history and sufficient detail was provided so that the Board's decision is a fully informed one, the examination is adequate. Stefl v. Nicholson, 21 Vet. App. 120, 123 (2007).

There is no indication in the record that any additional evidence, relevant to the issue decided, is available and not part of the file. See Pelegrini v. Principi, 18 Vet. App. 112 (2004). As there is no indication that any failure on the part of VA to provide additional notice or assistance reasonably affects the outcome of the case, the Board finds that any such failure is harmless. See Mayfield v. Nicholson, 20 Vet. App. 537 (2006); see also Shinseki v. Sanders/Simmons, 556 U.S. 129 (2009); Dingess/Hartman, 19 Vet. App. at 486.

II. Service connection

Establishing service connection generally requires medical or, in certain circumstances, lay evidence of (1) a current disability; (2) an in-service incurrence or aggravation of a disease or

injury; and (3) a nexus between the claimed in-service disease or injury and the present disability. See Davidson v. Shinseki, 581 F.3d 1313 (Fed.Cir.2009).

Establishing service connection on a secondary basis requires evidence sufficient to show (1) that a current disability exists and (2) that the current disability was either (a) caused by or (b) aggravated by a service-connected disability. 38 C.F.R. § 3.310(a); Allen v. Brown, 7 Vet. App. 439 (1995).

In making all determinations, the Board must fully consider the lay assertions of record. A layperson is competent to report on the onset and continuity of his current symptomatology. See Layno v. Brown, 6 Vet. App. 465, 470 (1994).

Lay evidence can also be competent and sufficient evidence of a diagnosis or to establish etiology if (1) the layperson is competent to identify the medical condition, (2) the layperson is reporting a contemporaneous medical diagnosis, or (3) lay testimony describing symptoms at the time supports a later diagnosis by a medical professional. Davidson, 581 F.3d at 1316; Jandreau v. Nicholson, 492 F.3d 1372, 1376-77 (2007).

The Veteran contends that service connection is warranted for his claimed diabetes mellitus based on exposure to Agent Orange during his service in Guam, and for diabetic peripheral neuropathy of the right upper extremity, diabetic neuropathy of the left upper extremity, and diabetic retinopathy as secondary to his diabetes mellitus.

The competent medical evidence of record does not demonstrate that the Veteran currently suffers from diabetic retinopathy. There has been no diagnostic testing to confirm a diagnosis of diabetic retinopathy. The November 2013 examiner reviewed the Veteran's medical history showing multiple ophthalmology examinations, finding no evidence of diabetic retinopathy of record, and diabetic retinopathy was not found on examination.

A current disability is required in order to establish service connection. Brammer, 3 Vet. App. at 225. There is no evidence that the Veteran has had the claimed disability at any time from when he first filed his claim for service connection in June 2009. McClain v. Nicholson, 21 Vet. App. 319 (2007).

Although lay persons are competent to provide opinions on some medical issues, see Kahana, 24 Vet.App. at 435, as to the specific issue in this case, determining whether the Veteran currently has diabetic retinopathy falls outside the realm of common knowledge of a lay person. See Jandreau, 492 F.3d at 1377 n.4.

In the absence of evidence of a current disability, the preponderance of evidence is against the claim for service connection of diabetic retinopathy; there is no doubt to be resolved; and service connection is not warranted.

Post-service medical records do show that the Veteran was diagnosed as having diabetes mellitus, diabetic peripheral neuropathy of the right upper extremity, and diabetic neuropathy of the left upper extremity. Therefore, the first requirement for service connection for these claims, the existence of a current disability, is met. See Hickson v. West, 12 Vet. App. 247, 253 (1999).

If a veteran was exposed to an herbicide agent during active service, a number of diseases, including type II diabetes mellitus, shall be service connected if the requirements of 38 C.F.R. § 3.307(a)(6) are met even though there is no record of such disease during service. 38 C.F.R. § 3.309(e). There is a presumption of exposure to herbicides (to include Agent Orange) for all veterans who served in Vietnam or the Korean DMZ during the Vietnam era. 38 U.S.C.A. § 1116(f); 38 C.F.R. § 3.307(a)(6). However, the Veteran has not asserted, nor does the record suggest, that he served within the Republic of Vietnam or the Korean DMZ. As such, the presumption of herbicide exposure does not apply, and actual, direct exposure to herbicides must be shown. See Combee v. Brown, 34 F.3d 1039, 1042 (Fed. Cir. 1994).

Service records indicate that the Veteran was stationed at Andersen Air Force Base at various times between 1958 and 1965. The Veteran has reported that the weather aircraft on which he flew was situated near a storage facility which housed Agent Orange that was used in Vietnam and possibly in Guam.

In support of his claim, the Veteran has submitted a number of pieces of circumstantial evidence indicating Agent Orange was stored at Anderson AFB and herbicides were used in Guam. He submitted news articles and statements indicating that herbicides were stored and used in Guam at the time the Veteran served on the island. One article in particular referenced a Dow Chemical Risk Report revealing a heavy concentration of dioxin on Anderson AFB that poisoned soldiers stationed there in the late 1960s and confirmed Agent Orange in Guam.

Following the Board's remand, the Veterans Benefits Administration (VBA) performed a search regarding the Veteran's claimed herbicide exposure. In an email dated January 2013, VBA stated that the Department of Defense (DOD) list of sites associated with Agent Orange and other tactical herbicides did not show any use or testing of tactical herbicides such as Agent Orange at any location in Guam before or during the Vietnam Era. VBA also stated that the available documents showed that all pesticides used in Guam were commercially available. The US Army and Joint Services Records Research Center (JSRRC) stated in a May 2013 memo that Compensation Service responded to a request to verify herbicide exposure in Guam that historical reports submitted by the 9th Weather Reconnaissance Wing stationed at Anderson Air Force Base in Guam did not document or verify exposure to Agent Orange or tactical herbicides nor did they document Agent Orange or tactical herbicides spraying, testing or storage at Anderson Air Force Base from December 1966 to February 1967.
After reviewing and weighing the evidence of record on the question of whether the Veteran was exposed to herbicides during his period of active service, the Board finds that there is a

state of equipoise of the positive and negative evidence. In such a case, the question is to be resolved in the appellant's favor. 38 U.S.C.A. § 5107(b); see also Gilbert v. Derwinski, 1 Vet. App. 49 (1990). Although the VBA and JSRRC provided evidence that the Veteran was not exposed, their findings were based on the DOD list and historical reports with little or no consideration to the other evidence of record which clearly demonstrates that herbicides were used in Guam, Agent Orange was stored in Guam, and there was a heavy concentration of dioxin found in the soil many years later. Further, the VBA finding showed that commercially available herbicides were present in Guam.

In view of the Veteran's credible statements and the news articles, and resolving all doubt in favor of the Veteran, the Board finds that the Veteran was exposed to herbicides during his active service in Guam.

Although presumptive service connection due to herbicide exposure is not available in the Veteran's case as he did not serve within the Republic of Vietnam or the Korean DMZ, the Veteran may still be entitled to service connection for diabetes mellitus on a direct basis if the evidence establishes that this disease is related to the herbicide exposure.

The medical evidence shows that the Veteran was diagnosed as having diabetes mellitus in 2007. The Veteran was afforded a VA examination in November 2013. Based on the examiner's opinion, service connection for the Veteran's diagnosed diabetes mellitus is warranted on a direct basis resolving doubt in the Veteran's favor. The examiner stated that he was not able to explain the etiology of diabetes mellitus to any degree of certainty without resorting to mere speculation. However, he opined that, despite his uncertainties, it was at least as likely as not that the diabetes incurred in or caused by the claimed inservice injury, event or disease, including exposure to herbicides, as reported used in Guam could have exposed him to the herbicide and subsequently a presumptive etiology for the diabetes mellitus. While the opinion is not a model of clarity, it appears that the examiner opined that it was at least as likely as not that the diabetes was caused by exposure to herbicides and, therefore, the evidence is, at worst, in equipoise. In light of the foregoing, service connection for diabetes mellitus is warranted. 38 U.S.C.A. § 5107(b).

The November 2013 examiner reviewed the Veteran's medical history showing no complaints of symptoms of the upper extremities. The Veteran complained of having numbness, pain and tingling to his hands and feet. On examination, decreased light touch was found and vibrations were consistent with diabetic neuropathy. The Veteran was diagnosed as having diabetic neuropathy of the upper and lower extremities and the examiner opined that it was at least as likely as not proximately due to or the result of the Veteran's diabetes mellitus. The examiner provided a rationale and the opinion is persuasive. See Prejean v. West, 13 Vet. App. 444, 448-49 (2000). In light of the foregoing, service connection for diabetic peripheral neuropathy of the right upper extremity and diabetic neuropathy of the left upper extremity is warranted.

ORDER

Service connection for Type II diabetes mellitus is granted.

Service connection for diabetic peripheral neuropathy of the right upper extremity is granted.

Service connection for diabetic neuropathy of the left upper extremity is granted.

Service connection for diabetic retinopathy is denied.

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RONALD W. SCHOLZ
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs

Citation Nr: 1328764
Decision Date: 09/09/13 Archive Date: 09/17/13

DOCKET NO. 11-19 894) DATE
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On appeal from the
Department of Veterans Affairs Regional Office in Honolulu, Hawaii

THE ISSUES

1. Entitlement to service connection for Type II diabetes mellitus.

2. Whether there is new and material evidence sufficient to reopen the claim of entitlement to service connection for diabetic retinopathy (claimed as due to herbicide exposure).

3. Entitlement to service connection for diabetic retinopathy.

4. Entitlement to service connection for diabetic peripheral neuropathy of the right upper extremity.

5. Entitlement to service connection for diabetic neuropathy of the left upper extremity.

REPRESENTATION

Appellant represented by: Military Order of the Purple Heart of the U.S.A.

ATTORNEY FOR THE BOARD

J. Meawad, Counsel

INTRODUCTION

This appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c) (2011). 38 U.S.C.A. § 7107(a)(2) (West 2002).

The Veteran served on active duty from January 1955 to February 1967.

This matter is before the Board of Veterans' Appeals (Board) on appeal of a February 2010 rating decision of a Department of Veterans Affairs (VA) Regional Office (RO) in Honolulu, Hawaii.

In June 2012, the Board reopened the claims for service connection for diabetes mellitus and hearing loss, granted service connection for hearing loss, and denied service connection for a prostate disorder. The remaining issues were remanded for further development.

The claim for service connection for diabetic retinopathy was denied by the RO in July 2008. Although the RO apparently reopened this claim in the February 2010 rating decision, the Board must independently consider the question of whether new and material evidence has been received because it goes to the Board's jurisdiction to reach the underlying claim and adjudicate the claim de novo. See Jackson v. Principi, 265 F.3d 1366 (Fed. Cir. 2001); Barnett v. Brown, 83 F.3d 1380, 1384 (Fed. Cir. 1996).

The issue of entitlement to service connection for diabetes mellitus is addressed in the REMAND portion of the decision below. The Veteran's claims for service connection for diabetic retinopathy and diabetic peripheral neuropathy of the upper extremities are secondary service connection claims, in that he argues that the retinopathy and the upper extremity peripheral neuropathy are causally or etiologically due to his diabetes mellitus. Thus, the issues of whether service connection for diabetic retinopathy and diabetic peripheral neuropathy of the upper extremities are warranted must also be remanded because these issues are inextricably intertwined with the diabetes mellitus claim. See Harris v. Derwinski, 1 Vet. App. 180 (1991) Therefore, these issues are REMANDED to the RO via the Appeals Management Center (AMC), in Washington, DC.

FINDINGS OF FACT

1. In July 2008 decision, the Board denied service connection for diabetic retinopathy.

2. Evidence received since the July 2008 rating decision is new and material; it relates to unestablished facts necessary to substantiate the claim and raises a reasonable possibility of substantiating the claim.

CONCLUSION OF LAW

The criteria for reopening the claim for service connection for diabetic retinopathy have been met. 38 U.S.C.A. §§ 5108, 7103(a) (West 2002 & Supp. 2011); 38 C.F.R. § 3.156 (2013).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

VA has a duty to notify and assist claimants in substantiating a claim for VA benefits. The Board is reopening the claim for service connection for diabetic retinopathy. Any error committed with respect to either the duty to notify or the duty to assist with regard to this issue was harmless and will not be further discussed.
The Board denied service connection for diabetic retinopathy in July 2008, finding that as diabetes mellitus is not related to service, service connection for diabetic retinopathy cannot be

granted on a secondary basis. There was also no evidence showing that diabetic retinopathy was incurred in or aggravated by service. This decision is final. 38 U.S.C.A. § 7103(a); 38 C.F.R. § 3.160(d).

In June 2009, the Veteran filed a request to reopen the claim.

Generally, when a claim is disallowed, it may not be reopened and allowed, and a claim based on the same factual basis may not be considered. Id. However, a claim on which there is a final decision may be reopened if new and material evidence is submitted. 38 U.S.C.A. § 5108.

'New' evidence is defined as existing evidence not previously submitted to agency decisionmakers. 'Material' evidence is defined as existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. 38 C.F.R. § 3.156(a). New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim. Id.

When determining whether the claim should be reopened, the credibility of the newly submitted evidence is to be presumed. Justus v. Principi, 3 Vet. App. 510 (1992).

The relevant evidence received since the July 2008 Board decision includes several news articles regarding herbicide exposure in Guam.

This evidence is new and material, as it was not of record at the time of the last rating decision. It demonstrates that the Veteran may have been exposed to herbicides during his service in Guam which, in turn, relates to his claim for service connection for diabetes mellitus. As the Veteran's claim for diabetic retinopathy is secondary to diabetes mellitus and the new evidence supports his claim for diabetes mellitus, reopening the claim is warranted. 38 U.S.C.A. § 5108.

ORDER

New and material evidence having been submitted, the petition to reopen the claim for service connection for diabetic retinopathy is granted.

REMAND

If a veteran was exposed to an herbicide agent during active service, a number of diseases, including type II diabetes mellitus, shall be service connected if the requirements of 38 C.F.R. § 3.307(a)(6) are met even though there is no record of such disease during service. 38 C.F.R. § 3.309(e). There is a presumption of exposure to herbicides (to include Agent Orange) for all veterans who served in Vietnam or the Korean DMZ during the Vietnam era. 38

U.S.C.A. § 1116(f); 38 C.F.R. § 3.307(a)(6). However, the Veteran has not asserted, nor does the record suggest, that he served within the Republic of Vietnam or the Korean DMZ. As such, the presumption of herbicide exposure does not apply, and actual, direct exposure to herbicides must be shown. See Combee v. Brown, 34 F.3d 1039, 1042 (Fed. Cir. 1994).

Service records indicate that the Veteran was stationed at Andersen Air Force Base at various times between 1958 and 1965. The Veteran has reported that the weather aircraft on which he flew was situated near a storage facility which housed Agent Orange that was used in Vietnam and possibly in Guam.

In support of his claim, the Veteran has submitted a number of pieces of circumstantial evidence indicating Agent Orange was stored at Anderson AFB and herbicides were used in Guam. For example, he submitted news articles and statements indicating that herbicides were stored and used in Guam at the time the Veteran served on the island. One article in particular referenced a Dow Chemical Risk Report revealing a heavy concentration of dioxin on Anderson AFB that poisoned soldiers stationed there in the late 1960s and confirmed Agent Orange in Guam.

Following the Board's remand, the Veterans Benefits Administration (VBA) performed a search regarding the Veteran's claimed herbicide exposure. In an email dated January 2013, VBA stated that the Department of Defense (DOD) list of sites associated with Agent Orange and other tactical herbicides did not show any use or testing of tactical herbicides such as Agent Orange at any location in Guam before or during the Vietnam Era. VBA also stated that the available documents showed that all pesticides used in Guam were commercially available. The US Army and Joint Services Records Research Center (JSRRC) stated in a May 2013 memo that Compensation Service responded to a request to verify herbicide exposure in Guam that historical reports submitted by the 9th Weather Reconnaissance Wing stationed at Anderson Air Force Base in Guam did not document or verify exposure to Agent Orange or tactical herbicides nor did they document Agent Orange or tactical herbicides spraying, testing or storage at Anderson Air Force Base from December 1966 to February 1967.

After reviewing and weighing the evidence of record on the question of whether the Veteran was exposed to herbicides during his period of active service, the Board finds that there is a genuine state of equipoise of the positive and negative evidence. In such a case, the question is to be resolved in the appellant's favor. 38 U.S.C.A. § 5107(b); see also Gilbert v. Derwinski, 1 Vet. App. 49 (1990). Although the VBA and JSRRC provided evidence that the Veteran was not exposed, their findings were based on the DOD list and historical reports with little or no consideration to the other evidence of record clearly demonstrating that herbicides were used in Guam, Agent Orange was stored in Guam, and there was a heavy concentration of dioxin found in the soil many years later. Further, the VBA finding showed that commercially available herbicides were present in Guam.

In view of the Veteran's credible statements and the news articles, and resolving all doubt in favor of the Veteran, the Board finds that the Veteran was exposed to herbicides during his active service in Guam.

Certain diseases associated with exposure to certain herbicide agents, including diabetes mellitus, type II, will be presumed to have been incurred in service even though there is no evidence of that disease during the period of service at issue. 38 U.S.C.A. § 1116(a); 38 C.F.R. §§ 3.307(a)(6), 3.309(e). However, presumptive service connection due to herbicide exposure is not warranted for the Veteran's type II diabetes mellitus as the record does not reflect, nor does the Veteran allege, that he served in the Republic of Vietnam or the Korean DMZ during the Vietnam era, or at any other time.

The Veteran may still be entitled to service connection for this disease on a direct basis if the evidence establishes that his diabetes mellitus is related to the herbicide exposure. Therefore, an examination is necessary to determine whether the Veteran's diabetes mellitus is related to his inservice exposure to herbicides. 38 C.F.R. § 3.159 (c)(4); 38 U.S.C.A. § 5103A(d).

Accordingly, the case is REMANDED for the following action:

1. Schedule the Veteran for an examination with an appropriately qualified medical professional to determine the etiology of his diabetes mellitus. The examination report must reflect review of all pertinent material in the claim folder.

The examiner is to offer an opinion as to whether it is at least as likely as not (a 50 percent or greater probability) that his diabetes mellitus is related to active service, including in-service exposure to herbicides, which is to be accepted as fact.

If it is determined that his diabetes mellitus is related to service, the examiner must provide an opinion as to whether it is at least as likely as not that his diabetic retinopathy and diabetic neuropathy of the upper extremities are caused or aggravated by the Veteran's diabetes mellitus.

In this context the term "aggravation" means a permanent increase in severity of the gastrointestinal disability, that is, a worsening of the underlying condition not due to the natural progress of the disability, or a temporary worsening of symptoms.

The examination report must include a complete rationale for all opinions expressed. If the examiner feels that a requested opinion cannot be rendered without resorting to speculation, the examiner must state whether the need to speculate is caused by a deficiency in the state of general medical knowledge (i.e. no one could respond given medical science and the known facts) or by a deficiency in the record or the examiner (i.e. additional facts are required, or the examiner does not have the needed knowledge or training).

2. Then, readjudicate the appeal. If any of the benefits sought remain denied, issue a Supplemental Statement of the Case and return the case to the Board.

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

This claim must be afforded expeditious treatment. 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 38 U.S.C.A. §§ 5109B, 7112 (West Supp. 2012).

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RONALD W. SCHOLZ
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs