

REASONS FOR DECISION

1. Service connection for type 2 diabetes mellitus as a result of exposure to herbicides.

Service treatment records do not show complaints, diagnosis, or treatment for type 2 diabetes mellitus. Service connection on a direct basis is denied.

Under the authority granted by the Agent Orange Act of 1991, VA has determined that presumption of service connection based on exposure to herbicides used in Vietnam is not warranted for any conditions other than those for which VA has found a positive association between the condition and such exposure. VA has determined that a positive association exists between exposure to herbicides and the subsequent development of the following eleven conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx and trachea, type 2 (adult-onset) diabetes mellitus, and chronic lymphocytic leukemia. PCT, chloracne, and acute and subacute peripheral neuropathy are required to become manifest to a compensable degree within one year from last exposure.

Service connection may be established based on a relationship to herbicide exposure only if evidence demonstrates that you either served in Vietnam during the Vietnam era or were exposed to herbicides through some other military experience. The required service in Vietnam is not shown, **nor is there evidence of exposure to herbicides in any other period of service.**

You indicated you were exposed to Agent Orange while you were stationed at Anderson Air Force Base on Guam. The October 2005 Board of Veterans' Appeals decision is based on the facts in that case alone and does not set a precedent for other cases. **Our VA Central Office informed us data from the Department of Defense does not show any use, testing, or storage of tactical herbicides, such as Agent Orange, at any location on Guam, with the exception of a brief period of early herbicide storage there during the Korean War (1951-53). These herbicides were shipped back to Ft. Detrick Maryland following the Korean armistice. The Joint Services Records Research Center informed us that research of available historical information does not document the spraying, testing, or storage of Agent Orange at Anderson Air Force Base, Guam.**

With no documented herbicide exposure, service connection for type 2 diabetes mellitus is also denied on a presumptive basis.

?? My job on Guam required me to work in areas while herbicides were being sprayed all around me, often. I have sworn testimony from the person doing the spraying and pictures and the EPA Superfund Sites test results showing TCDD/Dioxin contamination in many locations on Andersen AFB. I also have records of at least four other Veterans that are being paid for herbicide exposure on Guam. If nothing else why doesn't the Reasonable Doubt Regulation 38 CFR 3.102 apply? ??

38 CFR 3.102 - Reasonable doubt.

3.102 - Reasonable doubt.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. **When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant.** By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire, complete record otherwise warrants invoking this doctrine. **The reasonable doubt doctrine is also applicable even in the absence of official records,** particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships.

(Authority: 38 U.S.C. 501) [50 FR 34458, Aug. 26, 1985, as amended at 66 FR 45630, Aug. 29, 2001]

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