



to fulfill the statutory and regulatory duty to notify and duty to assist. 38 U.S.C.A. §§ 5103, 5103A (West 2002); 38 C.F.R. § 3.159 (2004). As the Board is providing a full grant of the benefit sought in this case, any failure to comply with the Veterans Claims Assistance Act of 2000 (VCAA) would not be prejudicial to the appellant. See, e.g., *Bernard v. Brown*, 4 Vet. App. 384 (1993); VAOPGCPREC 16-92.

The veteran has multiple systemic atrophy, olivopontine cerebellar degeneration. He has asserted that this disorder warrants service connection. He has argued that his disorder is the result of exposure to herbicides, like Agent Orange, in service.

In determining whether a claimed benefit is warranted, VA must determine whether the evidence supports the claim or is in relative equipoise, with the veteran prevailing in either event, or whether the preponderance of the evidence is against the claim, in which case the claim is denied. 38 U.S.C.A. § 5107(b) (West 2002); *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990).

In order to establish service connection for a claimed disorder, there must be (1) medical evidence of a current disability; (2) medical, or in certain circumstances, lay evidence of inservice incurrence or aggravation of a disease or injury; and (3) medical evidence of a nexus between the claimed inservice disease or injury and the current disability. See *Hickson v. West*, 12 Vet. App. 247, 253 (1999). The determination as to whether these requirements are met is based on an analysis of all the evidence of record, and an evaluation of its credibility and probative value. *Baldwin v. West*, 13 Vet. App. 1, 8 (1999).

A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era, and has a certain listed disability, shall be presumed to have been exposed during such service to an herbicide agent (Agent Orange), unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. 38 C.F.R. § 3.307(a)(6)(iii) (2004).

The Secretary of VA has determined that there is no positive association between exposure to herbicides and any other condition for which the Secretary has not specifically determined that a presumption of service connection is warranted. See *Diseases Not Associated With Exposure to Certain Herbicide Agents*, 61 Fed. Reg. 41442, 41448 (1996). Nevertheless, the United States Court of Appeals for the Federal Circuit has held that the Veteran's Dioxin and Radiation Exposure Compensation Standards (Radiation Compensation) Act, Pub. L. No. 98-542, § 5, 98 Stat. 2725, 2727-29 (1984), does not preclude a claimant from establishing service connection with proof of direct causation, a task "which includes the difficult burden of tracing causation to a condition or event during service." *Combee v. Brown*, 34 F.3d 1039, 1043 (Fed. Cir. 1994).

Service in Vietnam includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam. 38 C.F.R. § 3.313 (2004).

A June 2002 VA treatment record noted that the veteran was exposed to Agent Orange in Vietnam and that his job included

changing the tires of planes which carried Agent Orange. A July 2003 treatment record noted that the veteran reported that he did maintenance work on planes and his service included a tour of duty in Vietnam. During his August 2003 VA examination, the veteran reported that he was stationed in Thailand at Udorn Air Force Base during the Vietnam War and that he flew over Vietnam.

Requests for information from the National Personnel Records Center (NPRC) resulted in a response which indicated that that office was unable to determine whether the veteran served in Vietnam. The NPRC was also unable to verify whether the veteran was exposed to herbicides.

A November 1966 service medical records noted that the veteran was stationed in Thailand and worked indoors in an administrative capacity and was not in contact with any chemicals or solvents. Service personnel records show that he was stationed in Thailand from December 6, 1965, to November 9, 1966. In this case, the Board notes that the veteran's record of service reflects his receipt of the Vietnam Service Medal, although that medal was given to servicemembers who served outside of Vietnam as well as those that served in-country. His service personnel records also indicate that his assigned duty was as a clerk-typist for a vehicle maintenance unit in a combat support group. Despite the notation in the service medical records of lack of exposure to chemicals while in Thailand, records from the Department of Defense reveal that while the veteran was stationed in Thailand, there was a large-scale test program of Agent Orange in Thailand in addition to two other field tests of Agent Orange.

Thus, applying the benefit of the doubt rule the Board finds that the veteran was in fact exposed to dioxins in service. The Board finds that there is satisfactory evidence that the veteran had active service sufficiently proximate to herbicide testing in Thailand, if not to direct exposure in the Republic of Vietnam, to have sustained Agent Orange exposure.

However, as the evidence does not clearly show that the veteran "served in the Republic of Vietnam" for VA purposes, the presumptive provisions of 38 C.F.R. § 3.307 do not apply in this case. Thus, the veteran must establish service connection on a direct basis.

In this regard, the Board has conceded the in-service occurrence, exposure to herbicides, and the medical evidence of record reveals that he has a current disability. Notably, he first became aware of manifestations of multiple systemic atrophy, olivopontine cerebellar degeneration around 1997, and the disorder was first diagnosed around July 2000.

Thus, the remaining question in this case is whether there is evidence of a nexus between the claimed inservice disease or injury and the current disability. Applying the benefit of the doubt rule, the Board answers this question in the affirmative. The veteran's VA treating physician, T. J. Quarnstrom, M.D., reported in his notes in July 2004 and again in October 2004 that it was his opinion that the veteran's multiple systemic atrophy, olivopontine cerebellar degeneration, was related to exposure to herbicides in service. In essence, Dr. Quarnstrom explained that he based his opinion on the fact that degenerative neurological

diseases like multiple systemic atrophy develop in older individuals, so the veteran's case was unusual in that he was much younger than most people who develop multiple systemic atrophy, olivopontine cerebellar degeneration. The Board notes that there is no medical evidence which does not support the claim. The only other medical evidence on point is an August 2003 VA examination report which described the etiology of the disease as "uncertain."

For these reasons, the Board finds that service connection for multiple systemic atrophy, olivopontine cerebellar degeneration is warranted.

ORDER

The claim for service connection for multiple systemic atrophy, olivopontine cerebellar degeneration, is granted, subject to the laws and regulations governing the payment of monetary benefits.

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F. JUDGE FLOWERS

Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs