BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF SS

Docket No. 18-53 232

Represented by
Bonnie L. Freeman, Attorney

DATE: August 1, 2019

ORDER

Entitlement to service connection for Parkinson's disease, including as secondary to chemical and/or herbicide exposure, is granted.

REMANDED

Entitlement to service connection for bilateral upper extremity tremors and numbness, including as secondary to Parkinson's disease, is remanded.

FINDINGS OF FACT

1. The Veteran had service at Andersen Air Force Base in Guam from January 1973 to May 1974.

2. The Veteran has Parkinson's disease, which is attributable to his service.

CONCLUSION OF LAW

Parkinson's disease was incurred in service. 38 U.S.C. §§ 1101, 1110, 1112, 1113, 1116, 1131, 1137; 38 C.F.R. §§ 3.303, 3.307, 3.309 (2018).

REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran served on active duty in the U.S. Air Force from September 1970 to August 1991.

These matters come before the Board of Veterans' Appeals (Board or BVA) on appeal from an August 2017 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in St. Petersburg, Florida.

Duties to Notify and Assist

The Veterans Claims Assistance Act of 2000 (VCAA) imposes obligations on VA to provide claimants with notice and assistance. 38 U.S.C. §§ 5102, 5103, 5103A, 5107, 5126; Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Pub. L. No. 112-154, §§ 504, 505, 126 Stat. 1165, 1191-93; 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a) (2018). In this decision, the Board is granting the claim being decided herein. Further discussion of the VCAA is therefore unnecessary. *Wensch v. Principi*, 15 Vet. App. 362, 367-368 (2001).

Service Connection

Service connection may be granted for disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C. §§ 1110, 1131; 38 C.F.R. § 3.303(a) (2018). To establish a right to compensation for a present disability, a Veteran must show: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service—the so-called "nexus" requirement. *Holton v. Shinseki*, 557 F.3d 1362, 1366 (Fed. Cir. 2009) (quoting *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004)).

Service connection may be granted for any disease initially diagnosed after service 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).

For the showing of chronic disease in service, there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to

establish chronicity at the time. For chronic diseases, if chronicity in service is not established, a showing of continuity of symptoms after discharge is required to support the claim. 38 C.F.R. §§ 3.303(b), 3.309; *Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2013).

VA laws and regulations provide that, if a Veteran was exposed to Agent Orange during service, certain listed diseases are presumptively service-connected. 38 U.S.C. § 1116(a)(1); 38 C.F.R. § 3.309(e). A Veteran who "served in the Republic of Vietnam" between January 9, 1962 and May 7, 1975 is presumed to have been exposed during such service to Agent Orange. 38 U.S.C. § 1116(f); 38 C.F.R. § 3.307(a)(6)(iii). The listed diseases include Parkinson's disease, the condition at issue in this appeal.

The fact that a Veteran cannot establish entitlement to service connection on a presumptive basis does not preclude him from establishing entitlement on a direct incurrence or other basis. *See* 38 U.S.C. § 1113(b); 38 C.F.R. § 3.304(d) (the availability of service connection on a presumptive basis does not preclude consideration of service connection on a direct basis); *Combee v. Brown*, 34 F.3d 1039 (Fed. Cir. 1994) (Radiation Compensation Act does not preclude a veteran from establishing service connection with proof of actual direct causation).

1. Entitlement to service connection for Parkinson's disease, including as secondary to chemical and/or herbicide exposure

As an initial matter, the Board notes that the Veteran served with the 27th Communications Squadron at Andersen Air Force Base in Yigo, Guam from January 20, 1973 to May 10, 1974; these records do not reflect service in Vietnam and the Veteran does not allege service in Vietnam.

The Board notes that information from the Department of Defense (DOD) Inventory of Herbicide Operations Outside the Republic of Vietnam (RVN), Korean Demilitarized Zone (DMZ) or Thailand, indicates that DOD has not identified any location on the island of Guam, including Andersen Air Force Base, where Agent Orange was used, tested, stored, or transported. DOD information notes that Agent Orange was developed for jungle combat operations in Vietnam; Agent Orange was used in Vietnam from 1962 to 1971. Additionally, the report

from DOD indicates that Guam was not on the Agent Orange shipping supply line. DOD reports also reflect that the only herbicide use in Guam was commercial herbicides and that there was no scientific evidence available which shows that being in the vicinity of aircraft or equipment previously used in Vietnam can be considered as exposure to active Agent Orange or can result.

The Veteran alleges that he was exposed to Agent Orange or another herbicide while performing duties on the flight line, in support of aircraft arriving and departing from Vietnam, Laos, and Cambodia. In the alternative, the Veteran alleges that he was exposed to herbicides, including Agent Orange, while living and working on Andersen Air Force Base and surrounding areas; the Veteran indicated that the area was devoid of vegetation and reportedly had been sprayed with Agent Orange or other defoliant.

The Joint Service Records Research Center (JSRRC) was unable to confirm whether the Veteran was exposed to Agent Orange or tactical herbicides while serving in Guam.

However, the Veteran submitted documents from other members of the Air Force that Agent Orange or other chemical defoliant was used to remove vegetation from Andersen Air Force Base. Statements and photographs reflect that barrels of dioxin contaminants were stored at Andersen Air Force Base, and that nothing grew there, and most of the vegetation was brown and dead. In addition, the Veteran submitted a U.S. Navy analysis of chemical contamination in Guam groundwater, which indicates that 2, 4-D, a component of Agent Orange and "rainbow herbicide" was found in the soil. The Board notes that 2, 4-D is a recognized herbicide agent under 38 C.F.R. § 3.307(a)(6)(i).

Additionally, the Veteran submitted an article on Dow Chemical, the primary producer of Agent Orange and other herbicides, which indicates that soldiers stationed in Guam reported handling Agent Orange and had demonstrated symptoms of TCDD (dioxin) poisoning. This report also reflects that TCDD contamination was confirmed at Andersen Air Force Base in Guam; TCDD was noted as being a component of Agent Orange. Citations within the report on Dow Chemical indicate that the U.S. Agency for Toxic Substances and Disease Registry, Centers for Disease Control, Public Health Assessment, Andersen Air

Force Base Yigo, Guam, Appendix A: Evaluation of Potential IRP sites at Andersen Air Force Base confirmed TCDD contamination at Andersen Air Force Base due to Agent Orange handling.

The Veteran also submitted a report from J.N.D.W, MS, PhD, dated in April 2019. Dr. W, of Pharmacology/Toxicology Information Services, indicated that Agent Orange is a mixture of two herbicides: 2, 4,5-T and 2, 4-D. According to Dr. W, the active ingredient is a contaminant, TCDD; TCDD is the most toxic of dioxins and known human carcinogen. Dr. W related that a review of the Veteran's claims file and statements concerning his service at Andersen Air Force Base in Guam indicated that the Veteran's herbicide exposure at Andersen Air Force Base was likely Agent Orange. Dr. W further stated that the neurotoxicity of TCDD in Agent Orange causes Parkinson's disease. The Board notes that TCDD is a recognized contaminant under 38 C.F.R. § 3.307(a)(6)(i).

In light of the above evidence, the Board accepts that the Veteran was exposed to chemical and environmental toxins, to include herbicide agents, during active service in Guam while stationed at Andersen Air Force Base. The Board finds the Veteran's statements to be credible as they are consistent with the circumstances of his service and that herbicide exposure related to his service in Guam is conceded. *See* 38 U.S.C. § 1154(a). *See also Caluza v. Brown*, 7 Vet. App. 498 (1995).

In this case, there is evidence of Parkinson's disease. VA treatment records reflect that the Veteran was diagnosed with Parkinson's disease in February 2017. As noted in 38 C.F.R. § 3.309(e), Parkinson's disease is a disease that has been associated with herbicide exposure. Therefore, the Board concludes that the Veteran's Parkinson's disease is related to his period of active duty at Andersen Air Force Base in Guam, and the claim of service connection for Parkinson's disease is granted.

REASONS FOR REMAND

1. Entitlement to service connection for bilateral upper extremity tremors and numbness, including as secondary to Parkinson's disease is remanded.

The Veteran has not yet been afforded a VA examination in connection with his claim for service connection of bilateral upper extremity tremors and numbness. The Board observes that the Veteran's post-service treatment records reflect that the Veteran has been treated for complaints of tremors related to his now service-connected Parkinson's disease. As previously noted, the Veteran has been presumed to have herbicide exposure as a result of serving at Andersen Air Force Base in Guam. The Board notes that the medical evidence of record is unclear whether the Veteran has a separate diagnosed disorder due to his service, including his service-connected Parkinson's disease, or whether the Veteran's tremors and numbness are a manifestation of his now service-connected Parkinson's disease.

Accordingly, the Board finds that the Veteran should be afforded a VA examination regarding the claim for service connection. *See McLendon v. Nicholson*, 20 Vet. App. 79 (2006); 38 U.S.C. § 5103A(d)(1); 38 C.F.R. § 3.159(c)(4). VA adjudicators may consider only independent medical evidence to support their findings; they may not rely on their own unsubstantiated medical conclusions. If the medical evidence of record is insufficient, VA is always free to supplement the record by seeking an advisory opinion, or ordering a medical examination to support its ultimate conclusions. *See Colvin v. Derwinski*, 1 Vet. App. 171 (1991).

The matters are REMANDED for the following action:

> 1. Contact the Veteran and request that he identify the names, addresses, and approximate dates of treatment for all VA and non-VA health care providers who have treated him for his claimed disability on appeal. The Veteran should be requested to sign any necessary authorization for release of medical records to VA, and appropriate steps should be made to obtain any identified records.

If any requested records are not available, or the search for any such records otherwise yields negative results, that fact must clearly be documented in the claims file. If the records are unavailable, notify the Veteran in accordance with 38 C.F.R. § 3.159.

2. After any additional records are associated with the claims file, the RO should schedule the Veteran for an appropriate VA examination to determine the nature and etiology of the Veteran's claimed bilateral upper extremity tremors and numbness, including as secondary to service-connected Parkinson's disease.

Any and all studies, tests, and evaluations deemed necessary by the examiner should be performed. The examiner is requested to review all pertinent records associated with the claims file.

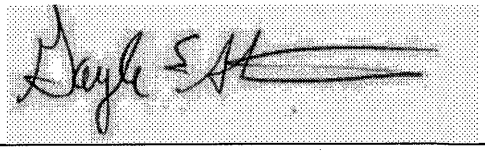
The examiner should then render an opinion as to whether the Veteran has a disability manifested by bilateral upper extremity tremors and numbness (separate from his service-connected Parkinson's disease) that is *at least as likely as not* (50 percent probability or more) related to any event, illness, or injury during service, including herbicide exposure during service.

If the Veteran has a diagnosis of bilateral upper extremity tremors and numbness that *is not related* to his military service, the VA examiner should provide an opinion as to whether his bilateral upper extremity tremors and numbness is proximately due to or the result of the Veteran's service-connected Parkinson's disease.

The examiner is advised that the Veteran is competent to report symptoms, including continuity of symptoms, treatment, and diagnoses and the examiner must take into account, along with the other evidence of record, the Veteran's statements in formulating the requested opinions.

A complete rationale, with specific reference to the relevant evidence of record, should accompany each opinion provided.

3. After completing all indicated development, the RO should readjudicate the Veteran's claim for service connection for bilateral upper extremity tremors and numbness. If the claim remains denied, the Veteran should be furnished with a supplemental statement of the case.



GAYLE STROMMEN
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board Hallie E. Brokowsky, Counsel

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential, and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.