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On appeal from the
Department of Veterans Affairs Regional Office in Montgomery, Alabama

THE ISSUE

Entitlement to service connection for Parkinson's disease as a result of exposure to herbicides, for purposes of accrued benefits.

REPRESENTATION

Appellant represented by: The American Legion

ATTORNEY FOR THE BOARD

R. Casadei, Associate Counsel

INTRODUCTION

The Veteran served on active duty from June 1950 to June 1954 and from August 1955 to August 1971. While his claim was pending, the Veteran died in January 2013 due to Parkinson's disease. The appellant is his widow and has been substituted as appellant in this case.

This matter comes on appeal before the Board of Veterans' Appeals (Board) from a December 2010 rating decision from the Department of Veterans Affairs (VA) Regional Office (RO) in Montgomery, Alabama, which denied service connection for Parkinson's disease.

This appeal was processed using the Veterans Benefits Management System (VBMS). Accordingly, any future consideration of this Veteran's case should take into consideration the existence of this electronic record. In evaluating this case, the Board has also reviewed the "Virtual VA" system to ensure a complete assessment of the evidence.

In November 2014, the Board requested a Veterans Health Administration (VHA) medical opinion on the issue of service connection for Parkinson's disease as a result of exposure to herbicides, for purposes of accrued benefits. In January 2015, the requested VHA opinion was received by the Board. It does not appear that a copy of the opinion has been provided to the appellant; however, given that the Board is granting the claim, issuing a decision without giving a copy of the opinion to the appellant is not prejudicial.

This appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c). 38 U.S.C.A. § 7107(a)(2) (West 2014).

FINDING OF FACT

The Veteran's Parkinson's disease is etiologically related to service.

CONCLUSION OF LAW

The criteria for service connection for Parkinson's disease, for the purposes of accrued benefits, have been met. 38 U.S.C.A. §§ 1101, 1131, 1137, 1153, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.303, 3.304 (2014).

REASONS AND BASES FOR FINDING AND CONCLUSION

Duties to Notify and Assist

The Veterans Claims Assistance Act of 2000 (VCAA) and implementing regulations imposes obligations on VA to provide claimants with notice and assistance. 38 U.S.C.A. §§ 5102, 5103, 5103A, 5107, 5126 (West 2014); 38 C.F.R. §§ 3.102, 3.156(a), 3.326(a) (2014). The claim of service connection for Parkinson's disease as a result of exposure to herbicides, for purposes of accrued benefits has been considered with respect to VA's duties to notify and assist. Given the favorable outcome of this decision, no conceivable prejudice to the Veteran could result from this decision. See *Bernard v. Brown*, 4 Vet. App. 384, 394 (1993).

Service Connection Laws and Regulations

Service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by active military, naval, or air service. 38 U.S.C.A. §§ 1110, 1131; 38 C.F.R. § 3.303(a). Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d). Parkinson's disease is not a "chronic disease" listed under 38 C.F.R. § 3.309(a) (2013); therefore, the presumptive service connection provision of 38 C.F.R. § 3.303(b) do not apply. *Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2013).

Generally, service connection for a disability requires evidence of: (1) the existence of a current disability; (2) the existence of the disease or injury in service, and; (3) a relationship or nexus between the current disability and any injury or disease during service. *Shedden v. Principi*, 381 F.3d 1163 (Fed. Cir. 2004); see also *Hickson v. West*, 12 Vet. App. 247, 253 (1999), citing *Caluza v. Brown*, 7 Vet. App. 498, 506 (1995), *aff'd*, 78 F.3d 604 (Fed. Cir. 1996).

In rendering a decision on appeal the Board must analyze the credibility and probative value of the evidence, account for the evidence which it finds to be persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant. *Gabrielson v. Brown*, 7 Vet. App. 36, 39-40 (1994); *Gilbert v. Derwinski*, 1 Vet. App. 49, 57 (1990). Competency of evidence differs from weight and credibility. Competency is a legal concept determining whether testimony may be heard and considered by the trier of fact, while credibility is a factual determination going to the probative value of the evidence to be made after the evidence has been admitted. *Rucker v. Brown*, 10 Vet. App. 67, 74 (1997); *Layno v. Brown*, 6 Vet. App. 465, 469 (1994); see also *Cartright v. Derwinski*, 2 Vet. App. 24, 25 (1991) ("although interest may affect the credibility of testimony, it does not affect competency to testify").

The degree of probative value which may be attributed to a medical opinion issued by a VA or private treatment provider takes into account such factors as its thoroughness and degree of detail, and whether there was review of the claims file. See *Prejean v. West*, 13 Vet. App. 444, 448-9 (2000). Also significant is whether the examining medical provider had a sufficiently clear and well-reasoned rationale, as well as a basis in objective supporting clinical data. See *Bloom v. West*, 12 Vet. App. 185, 187 (1999); *Hernandez-Toyens v. West*, 11 Vet. App. 379, 382 (1998); see also *Claiborne v. Nicholson*, 19 Vet. App. 181, 186 (2005) (rejecting medical opinions that did not indicate whether the physicians actually examined the veteran, did not provide the extent of any examination, and did not provide any supporting clinical data). The Court has held that a bare conclusion, even one reached by a health care professional, is not probative without a factual predicate in the record. *Miller v. West*, 11 Vet. App. 345, 348 (1998).

A significant factor to be considered for any opinion is the accuracy of the factual predicate, regardless of whether the information supporting the opinion is obtained by review of medical records or lay reports of injury, symptoms and/or treatment, including by a veteran. See *Harris v. West*, 203 F.3d 1347, 1350-51 (Fed. Cir. 2000) (examiner's opinion based on accurate lay history deemed competent medical evidence in support of the claim); *Kowalski v. Nicholson*, 19 Vet. App. 171, 177 (2005) (holding that a medical opinion cannot be disregarded solely on the rationale that the medical opinion was based on history given by the veteran); *Reonal v. Brown*, 5 Vet. App. 458, 461 (1993) (holding that the Board may reject a medical opinion based on an inaccurate factual basis).

When all the evidence is assembled, VA is responsible for determining whether the evidence supports the claim or is in relative equipoise, with the veteran prevailing in either event, or whether a preponderance of the evidence is against a claim, in which case, the claim is denied. 38 U.S.C.A. § 5107(b); 38 C.F.R. § 3.102.

Service Connection for Parkinson's Disease

A review of the evidence of record demonstrates that the Veteran served as an aircraft maintenance mechanic and crew chief throughout his 20 year career in the Air Force, with duty stations throughout the U.S., Guam and Japan. He reported that his duties exposed him to trichloroethylene (TCE), a cleaning solvent used to clean aircraft. For example, when aircraft returned to Guam from missions over Vietnam, the Veteran washed down the aircraft with TCE to remove Agent Orange and decontaminate the aircraft. This solvent was also used at duty stations in the U.S. He also used TCE to clean aircraft parts on a regular basis. The Board has finds the Veteran's statements regarding the use and exposure to TCE to be credible.

In May 2003, the Veteran was diagnosed with Parkinson's disease, and died in January 2013. The Veteran was not afforded a VA examination to assist in determining the etiology of his Parkinson's disease.

In a December 2013 letter, the Veteran's private physician stated that a study in 2010 confirmed that exposure to TCE could induce dopaminergic neurodegeneration and that, because the Veteran was exposed to TCE during active service, he may well have developed Parkinson's disease due to his exposure. The Board finds that the December 2013 opinion from the Veteran's private physician is speculative and inconclusive and cannot support a claim. See *Obert v. Brown*, 5 Vet. App. 30, 33 (1993); see also *Beausoleil v. Brown*, 8 Vet. App. 459, 463 (1996); *Libertine v. Brown*, 9 Vet. App. 521, 523 (1996) (A physician's statement framed in terms such as "may" or "could" is not probative.)

Pursuant to the Board's November 2014 request, a January 2015 VHA medical opinion was received, which addressed the etiology of the Veteran's Parkinson's disease. Dr. E.H., a VA Acting Chief of the Neurology Section at a VA Medical Center, stated that there had been several case reports in the medical literature of Parkinsonism including Parkinson's disease associated with exposure to TCE; however, to date, there had been no consistent evidence that TCE was a cause of Parkinson's disease. Nonetheless, Dr. E.H. noted that it was generally felt that TCE solvent was a "risk factor" for the development of Parkinsonism. In this particular case, Dr. E.H. stated that the Veteran had reported that, while serving in Guam, his duties included washing down aircraft with TCE to remove Agent Orange, which Dr. E.H. stated had been associated with Parkinsonism. As such, and after review of the evidence of record, Dr. E.H. opined that there was a 50 percent or better probability that the Veteran's Parkinson's disease was etiologically related to his service. The Board finds the January 2015 VHA medical opinion highly probative as to whether the Veteran's Parkinson's disease was related to service.

Based on the evidence of record, both lay and medical, the Board finds that the preponderance of the evidence weighs in favor of a finding that the Veteran's Parkinson's disease is related to service. Accordingly, the Board finds that service connection for Parkinson's disease as a result of exposure to herbicides, for purposes of accrued benefits is warranted.

ORDER

Service connection for Parkinson's disease as a result of exposure to herbicides, for purposes of accrued benefits, is granted.

R. FEINBERG

Acting Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs