THE ISSUE

Entitlement to service connection for coronary artery disease, including as due to in-service herbicide exposure.

REPRESENTATION

Appellant represented by: The American Legion

WITNESS AT HEARING ON APPEAL

Veteran

ATTORNEY FOR THE BOARD

A. Adamson, Counsel

INTRODUCTION

The Veteran served on active duty from September 1966 to April 1971. This matter comes before the Board of Veterans' Appeals (Board) on appeal from an August 2011 rating decision by the Department of Veterans Affairs (VA) Regional Office in St. Paul, Minnesota (RO).
FINDINGS OF FACT

1. The medical evidence of record shows that the Veteran has a current diagnosis of coronary artery disease.

2. The evidence of record is at least in equipoise as to whether the Veteran was exposed to an herbicidal agent during active military service.

CONCLUSION OF LAW


REASONS AND BASES FOR FINDINGS AND CONCLUSION

A February 2007 rating decision denied service connection for a heart condition. Effective August 31, 2010, ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable and Prinzmetal's angina), is included as a disease associated with herbicide exposure. 38 C.F.R. § 3.309(e). The evidence of record shows a current diagnosis of coronary artery disease. In light of the liberalizing law, the RO must reconsider the Veteran's claim on a de novo basis. See Pelegrini v. Principi, 18 Vet. App. 112, 125-26 (2004); Spencer v. Brown, 4 Vet. App. 283, 288-89 (1993), aff'd, 17 F.3d 368 (Fed. Cir. 1994) (finding that where there is an intervening liberalizing law or VA issue that may affect the disposition of a claim, VA is required to conduct a de novo review of the previously denied claim); see also Nehmer v. United States Veterans Administration, 712 F. Supp. 1404, 1423 (N.D. Cal. 1989); 38 C.F.R. § 3.816 (2013).

Without deciding whether notice and development requirements have been satisfied in the present case, the Board is not precluded from...

Service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by active military service, 38 U.S.C.A. § 1110; 38 C.F.R. § 3.303(a). In addition, 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). In order to prevail on the issue of service connection there must be medical evidence of a current disability; medical evidence, or in certain circumstances, lay evidence of in service occurrence or aggravation of a disease or injury; and medical evidence of a nexus between an in service injury or disease and the current disability. See Hickson v. West, 12 Vet. App. 247, 253 (1999); see also Pond v. West, 12 Vet App. 341, 346 (1999).

Initially, the medical evidence of record shows a diagnosis of coronary artery disease in 2002, with a stenting procedure in January 2003, as well as coronary artery bypass in August 2004. More recently, a December 2010 Ischemic Heart Disease Disability Benefits Questionnaire filled out by the Veteran's private physician confirmed the ongoing diagnosis of ischemic heart disease. As such, the Board finds that there is a current diagnosis of the claimed disability. Coronary artery disease may be presumed to have been incurred during active military service as a result of exposure to herbicides if it is manifest to a degree of 10 percent at any time after which the Veteran was exposed to herbicides during active service. 38 C.F.R. §§ 3.307(a)(6)(ii), 3.309(e).

The law provides that "[a] veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent . . . unless there is affirmative evidence to establish that the
veteran was not exposed to any such agent during that service." 38 U.S.C.A. § 1116(f). While all Veterans who served in the Republic of Vietnam during the Vietnam Era are presumed to have been exposed to an herbicide agent, the Veteran claims he is entitled to the presumption of herbicide exposure because he was stationed at U-Tapao Air Force Base in Thailand. VA has determined that there was significant use of herbicides on the fenced-in perimeters of military bases in Thailand intended to eliminate vegetation and ground cover for base security purposes as evidenced in a declassified Vietnam Era Department of Defense document titled "Project CHECO Southeast Asia Report: Base Defense in Thailand." Special consideration of herbicide exposure on a facts-found or direct basis should be extended to those Veterans whose duties placed them on or near the perimeters of Thailand military bases. That allows for presumptive service connection of the diseases associated with herbicide exposure.

The majority of troops in Thailand during the Vietnam Era were stationed at the Royal Thai Air Force Bases of U-Tapao, Ubon, Nakhon Phanom, Udorn, Takhli, Korat, and Don Muang. If a veteran served on one of those air bases as a security policeman, security patrol dog handler, member of a security police squadron, or otherwise served near the air base perimeter, as shown by military occupational specialty (MOS), performance evaluations, or other credible evidence, then herbicide exposure should be acknowledged on a facts-found or direct basis. This applies only during the Vietnam Era, from February 28, 1961, to May 7, 1975.

The Veteran claims that he was exposed to herbicides in Thailand, while at the U-Tapao air base. The Veteran's service records show that he was in Thailand at U-Tapao in 1967 and 1968, thus placing him there in the Vietnam Era. In an October 2011 statement, the Veteran reported that while at U-Tapao Air Field, his duties included operating and maintaining 65 portable generator sets that were located throughout the base, including on the perimeters of the base. The Veteran also stated that when not covering his shift as an Electrical Power Production Technician, he was called upon to guard the perimeter of the base as an Air Police Augmentee. The Veteran further clarified these duties at his September 2013 Board hearing. He reported that while an Electrical Power Specialist, he conducted emergency repairs and other maintenance at generators around the air base at thirty various sites.
He reported that several of these were at the perimeter of the base, within feet of where the fencing now stands. The Veteran confirmed that at the time he was there, the fencing along the perimeter was not yet in existence and much of the base was under construction. He reported he could see the dead grass along the perimeter area near the jungle. He also reported standing along the edge of the jungle while conducting his security duties.

The Board has reviewed the Veteran's claims files for evidence of this placement along the perimeter of U-Tapao Air Field in Thailand. The Veteran's service personnel records do not confirm the placement with specificity, but do include several performance reports noting the Veteran to be with the 635 Civil Engr. Squadron, U-Tapao Air Field, Thailand, during which he was an Electrical Power Production Specialist. Several of these reports specifically note that in this position, the Veteran operated and performed emergency repairs on 65 generator sets, and recorded voltage, amperage and pressure while the units were operating. The Veteran also submitted into the record a copy of a training certificate of recognition showing that he satisfactorily completed the course for Aerospace Security Force Augmentee in May 1967 while at U-Tapao Air Field in Thailand, corroborating the Veteran's report of collateral duties as a Security Force Augmentee.

Resolving all reasonable doubt in favor of the Veteran, the Board finds that that service near the perimeter of the base has been established through the Veteran's lay statements and supporting documentation. The Veteran's service personnel records, as well as the training certificate submitted, establish that he worked on generators around the entire base in Thailand, as well as conducted collateral duties with the security forces along the perimeter. These activities were completed during the VA-designated timeframe for which herbicide exposure in Thailand may be presumed. Therefore, based on the above-referenced recently unclassified Department of Defense document showing that there was significant use of herbicides on the fenced in perimeters of military bases in Thailand, the Veteran's credible assertions of serving on various occasions along or in close proximity to the perimeter area of U-Tapao Air Field, and resolving all reasonable doubt in his favor, the Board finds that the Veteran is presumed to have been exposed to herbicide agents during service.
In sum, the evidence of record demonstrates that the Veteran was exposed to an herbicidal agent during military service and that he has a current diagnosis of coronary artery disease. Accordingly, with application of the doctrine of reasonable doubt, presumptive service connection is warranted for coronary artery disease. See 38 C.F.R. §§ 3.307, 3.309; Gilbert v. Derwinski, 1 Vet. App. 49 (1990).

ORDER

Service connection for coronary artery disease is granted.

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JOY A. MCDONALD
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs