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On appeal from the
Department of Veterans Affairs Regional Office in Phoenix,
Arizona

THE ISSUES

1. Entitlement to dependency and indemnity (DIC) under 38 U.S.C.A. § 1310 based on service connection for the cause of the Veteran's death.
2. Entitlement to DIC under 38 U.S.C.A. § 1318.

REPRESENTATION

Appellant represented by:

WITNESS AT HEARING ON APPEAL

The appellant

ATTORNEY FOR THE BOARD

S. Mishalanie, Counsel

INTRODUCTION

Disabled American Veterans

The Veteran served on active duty from June 1963 to March 1967. He died in March

2010, and the appellant is his surviving spouse.

These matters are before the Board of Veterans' Appeals (Board) on appeal from an

April 2011 rating decision issued by the Department of Veterans Affairs (VA)

Pension Center at the Regional Office (RO) in Milwaukee, Wisconsin. The RO in

Phoenix, Arizona, certified the appeal to the Board.

In February 2013, the appellant testified before the undersigned Veterans Law

Judge. A transcript of that proceeding is of record. The record was held open for

60 days, and the appellant submitted additional evidence along with a waiver of

Agency of Original Jurisdiction (AOJ) review. See 38 U.S.C.A. § 20.1304 (2014).

The Veteran's paper claims file and electronic folder in Virtual VA and the

Veterans Benefits Management System (VBMS) have been reviewed in conjunction with the disposition of the issues on appeal. The Veteran's electronic folder in VBMS does not include any additional records. The electronic folder in Virtual VA includes a copy of the February 2013 hearing transcript.

FINDINGS OF FACT

1 of 4 10/14/15, 2:10 PM

1. The Veteran died in March 2010, and the death certificate lists the immediate cause of death as cholangiocarcinoma.
2. At the time of the Veteran's death, service connection had been established for residuals of prostate cancer, posttraumatic stress disorder (PTSD), erectile dysfunction, and hearing loss.
3. The evidence is at least in relative equipoise on the question of whether the Veteran's cholangiocarcinoma was incurred during his active duty service.

CONCLUSIONS OF LAW

1. The criteria for service connection for the cause of the Veteran's death have been met. 38 U.S.C.A. §§ 1101, 1110, 1310, 5107(b) (West 2014); 38 C.F.R. §§ 3.102, 3.159, 3.303, 3.312 (2014).
2. The appellant's claim of entitlement to DIC benefits under 38 U.S.C.A. § 1318 is dismissed as moot. 38 U.S.C.A. § 1318 (West 2014).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

I. Service Connection for the Cause of the Veteran's Death

At the time of the Veteran's death, service connection had been established for residuals of prostate cancer, PTSD, erectile dysfunction, and hearing loss. The death certificate indicates that the immediate cause of his death was cholangiocarcinoma - a rare form of cancer that affects the bile ducts. The appellant asserts that the Veteran's cholangiocarcinoma

was caused by parasite exposure during his service in the Republic of Vietnam. After careful consideration of the medical and lay evidence, and resolving reasonable doubt in the claimant's favor, the Board finds that service connection is warranted. Because the Board is granting entitlement to DIC benefits based on service connection for the cause of the Veteran's death, a discussion of the Board's duties to notify and assist the claimant are unnecessary. DIC benefits are payable to the surviving spouse of a veteran if the veteran died from a service-connected disability. 38 U.S.C.A. § 1310. Service connection may be granted for disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C.A. § 1110; 38 C.F.R. § 3.303(a). When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the VA shall give the benefit of the doubt to the claimant. 38 U.S.C.A. § 5107(b). In this case, there is both positive and negative evidence regarding whether the Veteran's cholangiocarcinoma was caused by parasite infection during his service in Vietnam.

In August 2012, a VA examiner provided a negative opinion regarding causation. She opined that the claimed condition was less likely than not incurred in or caused by the claimed in-service injury, event, or illness. She acknowledged that liver flukes are endemic to Southeast Asia, but noted that there was no clinical evidence of a liver fluke infection during service and no evidence of parasites after service. She noted that laboratory studies showed a normal eosinophil count and that an elevated eosinophil count would be expected if the Veteran was infested with parasites. The Board finds the August 2012 VA

medical opinion probative, as
it was based on a review of the relevant medical evidence
and history and was
supported by adequate rationale.
2 of 4 10/14/15, 2:10 PM

On the other hand, the evidence in support of the
appellant's claim is also
probative. Lay statements from fellow service members
describe the conditions in
Vietnam, including the lack of purified water at times.
They indicated that they
ate the local food and drank and showered in local water
where sewage was dumped.
These statements are competent and credible evidence of
the conditions that the
Veteran was exposed to during service.
In March 2013, the appellant also submitted a positive
medical opinion regarding
causation from a private physician. Dr. S.P. (initials
used to protect privacy)
opined that the Veteran's cholangiocarcinoma was at least
as likely as not the
result of a liver fluke infection contracted during
service in Southeast Asia. The
physician discussed in detail the relationship between
liver fluke infection and
cholangiocarcinoma, which is much more prevalent in
Southeast Asia. Most
importantly, he explained that liver flukes are frequently
undetected because the
disease is often diagnosed well past the life span of the
parasite and the disease
often causes unfavorable living conditions that kill the
liver flukes. Therefore,
they are frequently undetectable at the time of biliary
disease or
cholangiocarcinoma diagnosis. The Board finds Dr. S.P.'s
opinion probative, as it
is based on the Veteran's medical history, is supported by
detailed rationale, and
includes citations to relevant medical literature.
The appellant also submitted medical journal articles and

literature that explain the relationship between liver flukes and cholangiocarcinoma. This evidence indicates that individuals infected by liver flukes are often asymptomatic.

Therefore, the fact that the Veteran did not have a documented parasite infection during or after service is not necessarily fatal to the appellant's claim.

In summary, the Board finds that the lay statements and medical literature, along with the opinion of Dr. S.P., permit application of the reasonable doubt doctrine.

In other words, the evidence for and against the claim is at least in relative equipoise. Accordingly, resolving all reasonable doubt in the appellant's favor, the Board finds that the criteria for service connection for the cause of the Veteran's death are met. See 38 U.S.C.A. § 5107(b); 38 C.F.R. § 3.102.

II. DIC under 38 U.S.C.A. § 1318

In essence, 38 U.S.C. § 1310 and 38 U.S.C. § 1318 provide separate and alternative methods of obtaining VA DIC benefits. See, generally, *Green v. Brown*, 10 Vet. App. 111, 114-5 (1997).

Because the Board has granted service connection for the cause of the Veteran's death under the provisions of 38 U.S.C. § 1310, the matter of the appellant's alternative claim of entitlement to DIC benefits under 38 U.S.C. § 1318 is rendered moot. Accordingly, the issue of entitlement to DIC benefits under 38 U.S.C. § 1318 is dismissed as no benefit remains to be awarded and no controversy remains. Cf.

Swan v. Derwinski, 1 Vet. App. 20, 22-23 (1990).

ORDER

3 of 4 10/14/15, 2

Entitlement to service connection for the cause of the Veteran's death under 38 U.S.C.A. § 1310 is granted.

Entitlement to DIC benefits under 38 U.S.C. § 1318 is dismissed as moot.

J.W. ZISSIMOS

Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs

4 of 4 10/14/15, 2:10 PM