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On appeal from the  
Department of Veterans Affairs Regional Office in St.  
Petersburg, Florida

THE ISSUE

Entitlement to service connection for cholangiocarcinoma  
(liver cancer).

REPRESENTATION

Appellant represented by: The American Legion

ATTORNEY FOR THE BOARD

C. Eckart, Counsel

INTRODUCTION

The Veteran served on active duty from June 1956 to June  
1976. The appellant is  
his surviving spouse.

This matter comes before the Board of Veterans' Appeals  
(Board) on appeal from a  
July 2012 rating decision of the St. Petersburg, Florida,  
Regional office (RO) of  
the Department of Veterans Affairs (VA) which denied  
service connection for  
cholangiocarcinoma (also referred to in this decision as  
liver cancer).

The Veteran died in February 2013. In August 2014, the RO  
granted the Appellant's

March 2013 request to substitute for the Veteran for  
purposes of processing the  
claim to completion. 38 U.S.C.A. § 5121A (West 2014).

The RO issued a statement of the case in the appeal on  
August 19, 2014 and the

Appellant perfected the appeal on October 22, 2014.

Although the date stamp  
reflects it was received 3 days after the expiration of  
the appeal period (60 days

after issuance, it is deemed timely under 38 C.F.R. §  
20.305(a) (the "mailbox rule"

provision allowing a postmark date to be presumed to be

five days prior to the date of receipt of the document by VA.) Accordingly this matter is appropriately before the Board.

The issue of entitlement to service connection for cause of the Veteran's death has been raised by the record in the February 2013 death certificate submitted by the appellant, indicating that his liver cancer caused his death. This has not been adjudicated by the Agency of Original Jurisdiction (AOJ). Therefore, the Board does not have jurisdiction over it, and it is referred to the AOJ for appropriate action. 38 C.F.R. § 19.9(b) (2014). 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).  
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#### FINDING OF FACT

The Veteran's cholangiocarcinoma developed as a result of his ingesting *opisthorchis viverrini* (OV), a parasitic organism while serving under combat conditions in Vietnam.

#### CONCLUSION OF LAW

The criteria for service connection for cholangiocarcinoma are met.  
38 U.S.C.A. §§ 1110, 1154 (West 2014); 38 C.F.R. §§ 3.303, 3.304 (2014).

#### REASONS AND BASES FOR FINDING AND CONCLUSION

Service connection may be established for a disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C.A. § 1110. In order to establish service connection, generally there must be (1) medical evidence of a current disability; (2) medical, or in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and (3) medical evidence of a nexus between the claimed in-service disease

or injury and the current disability. See *Hickson v. West*, 12 Vet. App. 247, 253 (1999).

In the case of any Veteran who has engaged in combat with the enemy in active service during a period of war, satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, condition or hardships of such service, even though there is no official record of such incurrence or aggravation. Every reasonable doubt shall be resolved in favor of the Veteran. 38 U.S.C.A. § 1154(b); 38 C.F.R. § 3.304(d).

The appellant contends that service connected is warranted for the Veteran's cholangiocarcinoma (liver cancer). Specifically she alleges that the Veteran's service in Vietnam ultimately resulted in this cancer, to include either due to exposure to Agent Orange or from exposure to contaminated water containing parasites. Alternate arguments as to the cancer having resulted from exposure to contaminated water in Camp Lejeune have also been presented. Because the Board is granting on a direct basis based on exposure to parasitic organisms while serving in Vietnam, there is no need to consider this matter on the basis of exposure to Agent Orange or from contaminated water at Camp Lejeune. The Veteran is noted to have served two different tours in Vietnam, with participation in operations against armed communist insurgents in Vietnam from December 1966 to December 1967 and later service between September 1970 and April 1971. Combat is conceded by the VA as the service personnel records include a Citation received in January 1968 in which he was awarded the Navy Commendation Medal with a Combat "V" Device.

The evidence neither shows, nor does the appellant contend that the Veteran's liver cancer began in service, or within a one year presumptive period. Rather, as noted above, the cancer is alleged to be exposed to a harmful parasite in service. In his October 2012 NOD, the Veteran described having been placed at risk for infestation by the OV parasite (also known as a liver fluke) from consumption of the local water while in Vietnam. He described having to refill tanks, canteens and bathing in local water and that they were given iodine tablets to purify drinking water. His contentions regarding consumption of unclean water in Vietnam are deemed credible and consistent with the nature of his service. See 38 U.S.C.A. § 1154.

The evidence establishes that he was diagnosed with the cancer in 2012 decades after discharge, and underwent treatment that included extensive surgery in August

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2012. In pertinent part, and in support of his claim, he submitted the following opinions regarding the onset of his liver cancer. First, Dr. J.K.B. submitted a letter in May 2012 pointing out that he was the Veteran's family doctor. He noted that the Veteran had recently been diagnosed with cholangiocarcinoma, which this physician described as "a very rare form of liver cancer." Dr. J.K.B. pointed out that as a Veteran, he had several types of exposure which could have precipitated this type of carcinoma. Among the possible sources of exposure, this physician noted that the Veteran served in Vietnam with a water borne parasite known to cause this cancer. Dr. J.K.B. opined that given the extreme rarity of this carcinoma, his cancer is more than

likely than not directly attributed to his military service. Another May 2012 letter from a different private physician, Dr. D.B., was furnished in support of the claim on appeal. Dr. D.B. stated that the letter's purpose was to explain the Veteran's diagnosis and its potential relationship to exposures during his service. The Veteran's diagnosis was explained to be penhilar cholangiocarcinoma based on imaging and clinical history. Dr. D.B. noted that the condition has several risk factors, including infection with liver flukes, particularly OV, an organism endemic to Southeast Asia. Dr. D.B. also cited to findings from experts that also indicated that exposure to toxins such as dioxin may be contributing risk factors to the development of cholangiocarcinoma. Dr. D.B. provided references for the medical sources cited to support these statements. Finally, an opinion was provided in a November 2012 letter from Dr. O.K., Chief of Gastrointestinal Malignancies for a private cancer clinic. This medical specialist confirmed that the Veteran was diagnosed with stage IV cholangiocarcinoma. Dr. O.K. confirmed that he reviewed the Veteran's service department records that showed he was in Vietnam between December 1966 and December 1967, and that based on such service in Vietnam, it was his belief that it is more likely than not that the Veteran's cholangiocarcinoma was related to this service time in that region due to exposure to different parasites including Opisthorchis viverrini which increases the risk of cholangiocarcinoma by infesting the biliary tract for some time. Also in support of the claim, treatise information obtained from an internet search was submitted that supported the statements from the Veteran's physicians who

stated that the OV parasite (also called liver fluke) is prevalent in waters of Southeast Asia, including in Vietnam, and that this organism has been linked to the development of cholangiocarcinoma. An August 2012 VA examination addressing the etiology of the Veteran's liver cancer noted the history of diagnosis and treatment of the liver cancer, diagnosed as cholangiocarcinoma. This examiner stated that the Veteran did not have any signs or symptoms attributable to chronic or infectious liver disease. There was no diagnosis of hepatitis C noted. The claims file was reviewed and an opinion was given that the claimed condition was less likely than not incurred in or caused by service. The rationale was that although infections with liver flukes such as OV have been considered a risk factor for cholangiocarcinoma, the service treatment records were silent for any exposure to or contraction of the liver flukes. The examiner also stated that the reference materials cited by Dr. D.B. regarding the possible link between Dioxin exposure and cancer, the examiner noted that this particular cancer has not been determined by the VA to be associated with herbicide exposure. As the examiner failed to consider the Veteran's credible lay evidence of exposure to the OV parasite during combat service in Vietnam, the opinion is of limited probative value and does not outweigh the favorable evidence from the Veteran's private cancer specialists. To the contrary, the opinions from the Veteran's treating physicians, who include specialists in diagnosing and treating cancers of the digestive-biliary system, are accompanied by rationale supported by medical treatise information, finding that

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the Veteran's cancer was likely a result of such exposure in light of his service in a region known to contain the organisms. Accordingly, the Board lends greater weight to the aforementioned favorable opinions from the Veteran's treating physicians than to the unfavorable opinion from the August 2012 VA examiner.

ORDER

Service connection for cholangiocarcinoma is granted.

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S. BUSH

Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs

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