

Vet. App. No. 19-4993

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

RANDY L. WILLIAMS
Pro-se Appellant

v.

ROBERT L. WILKIE
Secretary, of Veterans Affairs
Appellee

APPELLANT INFORMAL BRIEF IN SUPPORT OF APPEAL

RANDY L. WILLIAMS
10819 Sierra Glen Drive
San Antonio, Texas 78245

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Did the Board of Veterans Appeals June 21, 2019 decision: (1) err in denying Veteran service connection for: Bilateral Hearing Loss, because of failure to meet criteria for hearing loss; in absence of VA required audiometric test results; (2) erred in denying Veteran nexus service connection for: “Residuals of Pharyngitis/Viral syndrome” because of failure to meet criteria for pharyngitis; (3) erred in denying Veteran nexus service connection for: “Residuals of Acne” because of failure to meet criteria for acne; (4) erred in denying Veteran nexus service connection for: Undiagnosed Illnesses not yet manifested but evidenced by Multiple Abnormalities in Veteran Metabolic Panel(s); because of failure to meet criteria for a chronic disability.	
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CITATIONS TO RECORD BEFORE THE AGENCY

Records of proceeding before the Court have been received and are noted in Appellee (Veteran) Brief.

Pertinent Legal Criteria

In the record presently before the Court, there is no evidence that the Board June 21, 2019 Decision & Order [properly] adjudicated veteran CUE motion. In **Barnett v. Brown**, 83 F.3d 1380, 1383 (Fed. Cir. 1996) (“[I]t is well-established judicial doctrine that any statutory tribunal must ensure that it has jurisdiction over each case before adjudicating the merits, that a potential jurisdictional defect may be raised by the court or tribunal, *sus sponte* or by any party at any stage in the proceedings, and, once apparent, must be adjudicated.”) *Jarrell*, 20 Vet. App. at 334; where the Board has not rendered a decision on a particular issue [alleged did not submit any new evidence or evidence that you have a current diagnosis for: Bilateral hearing loss; Pharyngitis/viral syndrome; Acne; or, Disability due to Abnormal lab results] the Court generally has No jurisdiction under section 7252(a) to consider the matter. See *Evans v. Shinseki*, 25 Vet. App. 7, 10 (2011); see also *Ledford v. West*, 136 F.3d 776, 779 (Fed. Cir. 1998).

“If at any time after VA issues a decision on a claim, VA receives

and associates with the claim file relevant official service department records that existed and had not been associated with the claim file when VA first decided the claim, VA will reconsider the claim. *See*, 38 CFR section 3.156(c). An award made based all or in part on the existence of these service records is effective the date that entitlement arose, or the date that VA received the previously denied claim, whichever was later. *See*, 38 CFR section 3.156(c)(4).

It is equally well established that Board and VA must develop claims and gather evidence in a neutral manner. See, **Austin v. Brown**, 6 Vet. App. 547, 553 (1994) (“[B]asic fair play requires that evidence be procured by the agency in an impartial, unbiased, and neutral manner.”) VA may not pursue development if the purpose is to obtain evidence against the claim. **Hart v. Mansfield**, 21 Vet. App. 505, 508 (2007). It would not be permissible for VA or Board to undertake such additional development if a purpose was to obtain evidence against an appellant’s case. **Mariano v. Principi**, 17 Vet. App. 305, 312 (2003). VA or Board must provide an adequate statement of reasons or bases for its decision

to pursue further development where such development reasonably could be construed as obtaining additional evidence for that purpose.

Rose v. West, 11 Vet. App. 169, 172 (1998).

Statement of physicians, who were personal observer of veteran's conditions immediately subsequent to separation from service and who observed veteran years later, that it was perfectly reasonable for veteran's [hearing loss; pharyngitis/viral syndrome; residuals of Acne; Abnormal Lab reports, of undiagnosed illnesses] caused by in-service injury part of claimed [CUE] was also "new and material evidence" warranting reopening of RO previously disallowed claim(s).

Budnik v. Derwinski, 3 Vet. App. 185, (1992).

The Federal Circuit has emphasized that the "VA disability compensation system is not meant to be a trap to deny compensation to a veteran who has a valid claim, but who may be unaware of the various forms of compensation available to him." See, **Comer v. Peake**, 552 F.3d 1362, 1369 (Fed. Cir, 2009)

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v.

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**APPELLANT IN-FORMAL BRIEF IN SUPPORT OF APPEAL
ISSUES PRESENTED**

Did the Board of Veterans Appeals June 21, 2019 decision: (1) err in denying Veteran service connection for: Bilateral Hearing Loss, because of failure to meet criteria for hearing loss; in absence of VA required audiometric test results; (2) erred in denying Veteran nexus service connection for: "Residuals of Pharyngitis/Viral syndrome" because of failure to meet criteria for pharyngitis; (3) erred in denying Veteran nexus service connection for: "Residuals of Acne" because of failure to meet criteria for acne; (4) erred in denying Veteran nexus service connection for: Undiagnosed Illnesses not yet manifested but evidenced by Multiple Abnormalities in Veteran Metabolic Panel(s); because of failure to meet criteria for a chronic disability.

STATEMENT OF THE CASE

A. Jurisdictional Statement

Appellate jurisdiction is predicated on 38 USC section 7252.

B. Nature of the Case

Did the Board of Veterans Appeals June 21, 2019 decision: **(1)** err in denying Veteran service connection for: Bilateral Hearing Loss, because of failure to meet criteria for hearing loss; in absence of VA required audiometric test results; **(2)** erred in denying Veteran nexus service connection for: “Residuals of Pharyngitis/Viral syndrome” because of failure to meet criteria for pharyngitis; **(3)** erred in denying Veteran nexus service connection for: “Residuals of Acne” because of failure to meet criteria for acne; **(4)** erred in denying Veteran nexus service connection for: Undiagnosed Illnesses not yet manifested but evidenced by Multiple Abnormalities in Veteran Metabolic Panel(s); because of failure to meet criteria for a chronic disability.

C. Statement of the Facts

Randy L. Williams (Veteran or appellant) APPLICATION FOR COMPENSATION - VA FORM 21-526 show Veteran had active service in the United States Air Force from October 11, 1991 to October 10, 1995, with a Reserve obligation termination date of July 10, 1998.

Served in support of Operation Desert Shield/Storm verified in (DD-214 Item #18).

Service department ***Respiratory Protection Program*** data worksheet dated **February 3, 1993** required Veteran signature in fulfillment of requirements of AFOSH Standard 161-1 and SA-ALC-KAFBR 161-3 require Veteran to wear a respiratory device when performing duties {***handling toxic chemicals and contaminated waste***} within Veteran work area.

1. Service Department Spirometer treatment Data Record dated 4/14/92 noted Veteran spirometry within normal limits.

FEV-1%

	FEV-1	FVC	FVC	FEF-25-75%
Observed.....	4.57	4.6191.4.....6.07
Predicted.....	4.18	4.7885.6.....5.15
%Predicted...100.....	96	106117

Service Department April 5, 1992 Supplemental treatment Data Sheet of Veteran {Chemistry} findings:

T.P.- 7.4;
Alb.- 4.7;
Alk.Phos. - 70;
SGOT - 70
LDH - 162
Total Bili. - 0.2
SGPT - 14
GGPT - 11

Service Department notice and reply by Veteran on regulatory ***Voluntary Wearing of Respiratory Protection Device dated February 3, 1993***

because: "Veteran enter confined spaces and when working in other unsafe job areas," signed by *Bioenviromental Engineering Tech.*

Service Department Physical Therapy Consultation dated March 12, 1993 assessment: Mech. Low Back Pain Grade I muscle strain, back extension, slight discomfort with deep palpation of thoracolumbar back extensions. Prescribed: Motrin, etc.

Service Department June 27/28, 1993 Emergency Medicine complaint of ankle pain, diagnosis: Grade II rt ankle sprain; fitted for ankle brace right foot.

Service Department Emergency Care & Treatment July 14, 1993 diagnosis of Grade 2 rt. Ankle sprain with swelling; x-ray impression.

Service Department **August 17/18, 1993, 651st Medical Squadron**
Record of Medical Care for Sore throat, nausea x3days Assessment:
Exudative pharyngitis/Viral syndrome, prescribed: Amox. 250mg.;
Duravent 20, etc.,

Service Department **September 3, 1993 Hearing Conservation**
Record of Medical Care Impression: Hearing within normal limits;
AU extent at 6Khz, mild HL

Service Department November 8, 1993 Record of Medical Care back pain, Assessment: Lumbar strain, prescribed: Naprosyn 500mg.

Service Department Record of Medical Care dated **February 9, 1994**
treatment for Acne, prescribed Retin A, Doxycyclie.

Service Department **April 6, 1994 Primary Care Clinic treated**
veteran for vomiting, diarrhea, temp. x2day – Assessment: AGE,
viral

Service Department **Dermatology treatment dated June, 1994**
improved Acne, use sunscreen, Doxy 10mg.

Service Department Emergency Medicine report dated July 5, 1994
Sprained rt. ankle, increased swelling/pain.
Service Department Hearing Conservation Examination dated
September 9, 1994 noted Veteran checked [Yes] to Ringing in ears.

Service Department December 22, 1994 Emergency Medical report
swelling, of Acute Grade II ankle sprain.

**Service Department March 6, 1995 Record of Medical Care for
stuffy nose, sore throat, congestion, cough x4days; Assessment:
Clinically acute ? ; prescribed: Amoxicillin 500mg.; Darvon 30;**

**Service Department July 2, 1995 Record of Medical Care for sore
throat, coughing up blood, congested; Assessment: Exudative
pharyngitis.**

Veteran private physician 9/14/12 Lab Report verify **MULTIPLE
ABNORMALITIES in Veteran Metabolic Panel(s)** caused and/or
aggravated due to Veteran in-service exposure to {toxic chemicals and
contaminated waste} contributing to the following elevated
Comprehensive Metabolic Panel(s):

*Glucose..... [Hi].....105 mg/dl....range 65 to 99
*BUN..... [elevated].....24 mg/dl..range 7 to 25
*Protein Tot.....[bottom].....6.8 g/dl....range 6.2 to 8.3
*Globulin.....[bottom].....2.2 g/dl....range 2.1 to 3.7
*Albumin/Globulin ratio.....2.1(calc)....range 1.0 to 2.1
*Alkaline Phosphatase.....[LO]...31 U/L....range 40 to 115
*ALT.....[elevated].....59 U/L....range 9 to 60
*WBC.....[LO]....3.7 uL....range 3.8 to 10.8
*RBC.....[LO]....4.02.....range 4.20 to 5.80
*Hemoglobin.....[LO]..12.8 g/dL..range 13.2 to 17.1
*Hematocrit.....[LO]...36.8%..... range 38.5 to 50.0
*PSA.....0.4..... range 4.0

RO 7/29/13 letter conceded to receipt of the following relevant records; {See, Ltr.pg.3 - What We Have Received}:

DD-214; Two Volumes of Srv.Treatment
Records; One Volume of Private Treatment
Records; dating after separation from Srv.

RO December 23, 2013 rating decision "Evidence" section listed the following treatment records evaluated by Rating Specialist:

(1) Service treatment records dated from October, 1991 to October, 1995; (2) Private Treatment records from Dr Gonzaba Med. Grp. dated from Novemebr, 2011 to September, 2012; (3) Private treatment records from Metropolitan Methodist Hospital dated September, 2004; (4) VA contract exam. dated November 2013.

Director {EIC} 01/30/2018 [SOC] "Evidence" conceded reviewing the following relevant fact:

*RO October 18, 1991 and July 17, 1995 *receipt* of Veteran service treatment records dating from October 11, 1991 through October 10, 1995; and

*RO October 10, 1995 *receipt* of Veteran DD-214 Certificate of Release of Discharge from Active Duty from October 11, 1991 through October 10, 1995.

1. RO {EIC} 01/30/2018 [SOC] continued denial with RO 7/29/13 letter of alleged committed clear and unmistakable error requesting Veteran to produce evidence "showing veteran service in the

Southwest Asia Theater of Operations” where RO conceded to receipt of the following relevant records; {See, Ltr.pg.3 - What We Have Received}:

DD-214; Two Volumes of Srv.Treatment
Records; One Volume of Private Treatment
Records; dating after separation from Srv.

2. RO {12/23/13 Decision Letter} received February, 2014 incorrectly applied Title 38 statutory and regulatory provisions extant at the time of RO original decision.

3. RO {12/23/13} committed clear and unmistakable error denying Veteran service connection rating in excess of 10% percent for:

Thoracolumbar strain (claimed as lower
back pain/muscle strain) with secondary
aggravation of veteran noncompensable
service connected Restrictive lung disease

incorrectly applied 38 CFR section 4.71a diagnostic code [5237] and NOTE #(5) {breathing limited to diaphragmatic respiration} aggravate Veteran noncompensable service connected “**Restrictive lung disease**” and functional loss with painful motion which required in service Physical Therapy dated March 12, 1993 assessment: **Mech. Low Back Pain Grade I** muscle strain, back extension, slight discomfort with deep palpation of thoracolumbar back extensions.

Prescribed: Motrin; November 8, 1993 Record of Medical Care back pain, Assessment: Lumbar strain, prescribed: Naprosyn 500mg; Service Department Spirometer treatment Data Record dated 4/14/92 noted Veteran spirometry within normal limits.

FEV-1%	FEV-1	FVC	FVC	FEF-25-75%
Observed.....	4.57.....	4.61.....	91.4.....	6.07

7.

Predicted.....4.18.....4.78.....85.6.....5.15
%Predicted...100.....96.....106.....117

[R.at pg.245-49] 11/26/2013 Lung condition/Minimal right basilar atelectasis

4. RO {12/23/13} committed clear and unmistakable error denying Veteran service connection rating in excess of 10% percent for: Right ankle sprain, {diagnosed in service as Acute right ankle sprain} incorrectly applied 38 CFR section 4.71a diagnostic code [5270-5271] functional loss and painful motion which required in service June 27/28, 1993 Emergency Medicine complaint of ankle pain, diagnosis: Grade II rt ankle sprain; fitted for ankle brace right foot; Service Department Emergency Care & Treatment July 14, 1993 diagnosis of Grade 2 rt. ankle sprain with swelling; Emergency Medicine report dated July 5, 1994 Sprained rt. ankle, increased swelling/pain; Service Department December 22, 1994 Emergency Medical report swelling, of Acute Grade II ankle sprain.

5. RO {12/23/13} committed clear and unmistakable error denying Veteran service connection for: "**Bilateral hearing loss**" and aggravation secondary to Veteran service connected 10% percent **Tinnitus**; incorrectly applied 38 CFR section 3.310 and section 3.310(a) where Service Department September 3, 1993 Hearing Conservation Record of Medical Care Impression noted hearing within normal limits; AU extent at 6Khz, mild HL; and incorrectly applied 38 CFR Section 4.26 {Bilateral Factor} warranting 10% percent rating for right and left side audiometric deficiency.

[R.at pg.226] Note: Right ear significant changes in hearing thresholds in service. [R.at pg.229] Note: Recurrent Tinnitus

[R.at pg.562] September 9, 1994 Hearing Conservation Impression Stable hearing threshold Within Normal Limits

6. RO {12/23/13} committed clear and unmistakable error denying Veteran service connection for service incurred:

“Residuals of Pharyngitis/viral syndrome”

because rating specialist determined condition was not related to veteran military service, committed clear and unmistakable error where Service Department August 17/18, 1993, 651st Medical Squadron Medical Care reported treatment for: **[R.at pg.642-644]**

Sore throat, nausea x3days Assessment:
Exudative pharyngitis/Viral syndrome,
prescribed: Amox. 250mg.; Duravent 20,
etc.; Service Department April 6, 1994
Primary Care Clinic treated veteran for
vomiting, diarrhea, temp. x2day -
Assessment: AGE, viral; Service
Department March 6, 1995 Medical Care
reported treatment for stuffy nose, sore
throat, congestion, cough x4days;
Assessment: Clinically acute ?; prescribed:
Amoxicillin 500mg.; Darvon 30; Service
Department July 2, 1995 Record of Medical
Care for sore throat, coughing up blood,
congested; Assessment: Exudative pharyngitis.

[R.at pg. 245/249] November 26, 2013 PFT Study: Chest minimal right basilar atelectasis; defined as incomplete expansion of all or part of the lungs or collapse of lung tissue in adults.

[R.at pg.541] February 23, 2010 Assessment: Acute sinusitis;
Allergic rhinitis; Acute pharyngitis;

[R.at pg.557] September 30, 2004 Cardiogram: left ventricular

hypertrophy; left ventricular abnormalities; mildly dilated left atrium; mild aortic insufficiency; mild tricuspid; estimated pulmonary pressure 30 to 35 mm

7. RO {12/23/13} committed clear and unmistakable error denying Veteran service connection for service incurred:

“Residuals of Acne”

because rating specialist determined condition was not related to veteran military service, committed clear and unmistakable error where Service Department Medical Care report:

noted February 9, 1994 date veteran treated for Acne, prescribed Retin A, Doxycycline; Service Department Dermatology treatment dated June, 1994 improved Acne, use sunscreen, Doxy 10mg.

[**R.at pg.67**] note denied acne based on 11/26/2013 VA contract exam noted had been resolved; rating specialist noted reviewed veteran private treatment records; YET failed to note RESULTS of medical evidence reviewed [**R.at pg.36**] Gonzaba Medical Center 11/18/2011 to 09/24/2012; VA Treatment records from February 2014 to April 2015.

8. RO {12/23/13} committed clear and unmistakable error denying Veteran service connection for service incurred:

Cardiac disorder, Hypertension,
linked to abnormal lab results;

because rating specialist determined condition was not related to veteran military service, overlooked listed {38 CFR section 3.317 undiagnosed illness} committed clear and unmistakable error where Service

Department April 5, 1992 Supplemental treatment Data Sheet of Veteran {Chemistry} noted the following findings:

T.P.- 7.4;
Alb.- 4.7;
Alk.Phos. - 70;
SGOT - 70
LDH - 162
Total Bili. - 0.2
SGPT - 14
GGPT - 11

Service department Respiratory Protection Program data worksheet dated February 3, 1993 required Veteran signature in fulfillment of requirements of AFOSH Standard 161-1 and SA-ALC-KAFBR 161-3 require Veteran to wear a respiratory device when performing duties {handling toxic chemicals and contaminated waste}

Service duties involving exposure to asbestos or other chemicals, required veteran compliance with "Voluntary Wearing of Respiratory Protection Device" and signature of veteran confirming notification; Service record dated February 3, 1993 noted: "Veteran enter confined spaces and when working in other unsafe job areas," confirmed by signature of Bioenviromental Engineering Tech.

Private physician 9/14/12 Lab Report verify MULTIPLE ABNORMALITIES in Veteran Metabolic Panel(s) caused and/or aggravated due to Veteran in-service exposure to {toxic chemicals and contaminated waste} contributing to the following elevated Comprehensive Metabolic Panel(s):

*Glucose.....[Hi].....105 mg/dl....range 65 to 99
*BUN.....[elevated].....24 mg/dl....range 7 to 25
*Protein Tot.....[Lo.range].....6.8 g/dl....range 6.2 to 8.3
*Globulin.....[Lo.range].....2.2 g/dl....range 2.1 to 3.7

*Albumin/Globulin ratio.....2.1(calc)...range 1.0 to 2.1
 *Alkaline Phosphatase.....[L].....31 U/L....range 40 to 115
 *ALT.....[Hi].....59 U/L....range 9 to 60
 *WBC.....[L].....3.7 uL...range 3.8 to 10.8
 *RBC.....[L].....4.02.....range 4.20 to 5.80
 *Hemoglobin.....[L].....12.8 g/dL.range 13.2 to 17.1
 *Hematocrit.....[L].....36.8%.....range 38.5 to 50.0
 *PSA.....0.4.....range 4.0

9. RO {12/23/13} committed clear and unmistakable error denying Veteran service connection for:

Undiagnosed conditions, illnesses, and
 diseases linked to abnormal Metabolic
 Panel(s)

entitled presumptive service connection based on link to Persian Gulf, incorrectly applied 38 CFR section 3.317 Undiagnosed Illnesses (signs & symptoms); and 38 CFR section 3.310 and section 3.310(a) abnormal lab results signs or symptoms contributing to cause and aggravation of service connected conditions; linked to:

Service department Respiratory Protection Program data worksheet dated February 3, 1993 required Veteran signature in fulfillment of requirements of AFOSH Standard 161-1 and SA-ALC-KAFBR 161-3 require Veteran to wear a respiratory device when performing duties {handling toxic chemicals and contaminated waste}.

10. R.O January 30, 2018 [SOC] Reasons and Bases for its decision failed to reference in ***support of its unfavorable conclusions*** required medical opinion or results of medical test and evaluation(s) for each claimed condition; WHERE Director {EIC} January 30, 2018 [SOC]

note in its "Evidence" section to have reviewed the following medical treatment records: [R.at pg. 36]

Service treatment records, received on Oct. 1991 & July 1995
VA Outpatient treatment records from Feb.2014 to Apr.2015
Private treatment records from Nov. 2011 to Sept. 2012
Private treatment records from September, 2004
VA contract examination from Nov. 2013

Where Director {EIC} January 30, 2018 [SOC] reasons and basis for unfavorable [CUE] decision did not address argument of incorrectly applied regulatory provisions alleged, but instead noted: "do not possess evidence that you have a current diagnosis of: "bilateral hearing loss; pharyngitis/viral syndrome; Acne; or chronic abnormal lab results; did not satisfy regulatory definition of 38 CFR section 3.105(a)

[R.at pg.73] note Glucose [HI]; Urea Nitrogen [HI]; Alkaline Phosphat [LO]; HCT [LO] ASSESSMENT: (1) HTN stable on Benicar; (2) Chronic low back pain; stable on tramadol, skelatin; naproxen; (3) GERD, on omeprazole; (4) Hypothyrodism subclinical, continue to monitor.

SUMMARY OF THE ARGUMENTS

Board decision [R.at pg.6-7] notes that the *lay evidence of record does not demonstrate a *hearing loss* for VA purposes; and
*preponderance of the evidence weights against the claim; Board found that *evidence of record did not support a finding that "pharyngitis or
acne are related to service; Board notes that the Veteran *has *not*

identified any chronic disability related to service that is manifested by an abnormal lab result; and the *benefit of the doubt doctrine is not applicable; is **contradictory** with Regional Office Director Evidence Intake Center [R.at pg.65-67] 01/20/2018 [SOC] decision & reasons for unfavorable CUE decision stating: *“We still do not possess evidence that you have a current diagnosis of: bilateral hearing loss; pharyngitis/ viral syndrome; acne; disability due to abnormal lab results;” failed to explain how RO reason for unfavorable decision denial of service connection for claimed conditions was not a clear and unmistakable error;” WHERE regional office reason for decision did not provide required argument as to why RO determined that revision of prior decision(s) were not warranted, because RO at the time correctly applied relevant title 38 provisions; contrary to definition of CUE:

“A request for revision of a final RO decision based on CUE is “not a claim for benefits in its own right; rather, it is a collateral attack on an otherwise final benefits decision on the basis of a specific allegations of CUE.” ***See, Jarrell v. Nicholson***, 20 Vet. App. 326, 332 (2006) (en banc). Furthermore, “each ‘specific’ assertion of CUE constitutes a claim that must be the subject of a

decision by the [Board] before the Court can exercise jurisdiction over it.” *See, Andre v. Principi*, 301 F.3d 1354, 1361 (Fed. Cir. 2002).

and determined incorrectly applied by Board [R.at pg.5] a law and regulation permitting service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by active service establishing a present disability; in-service incurred disability; and a nexus relationship based on characteristic manifestations of the disease to the required degree or continuity of symptomatology after discharge supporting the claim; as follow:

Service Department September 3, 1993 **Hearing Conservation** Record of Medical Care Impression noted hearing within normal limits; AU extent at 6Khz, mild HL; and incorrectly applied 38 CFR Section 4.26 {Bilateral Factor} warranting 10% percent rating for right and left side audiometric deficiency.

[R.at pg.226] Note: Right ear significant changes in hearing thresholds in service. [R.at pg.229] Note: Recurrent Tinnitus

[R.at pg.562] September 9, 1994 Hearing Conservation Impression Stable hearing threshold Within Normal Limits

“Residuals of Pharyngitis/viral syndrome” where rating specialist determined condition was not related to veteran military service, committed clear and unmistakable error where Service Department

August 17/18, 1993, 651st Medical Squadron Medical Care reported treatment for: [R.at pg.642-644]

Sore throat, nausea x3days Assessment:
Exudative pharyngitis/Viral syndrome,
prescribed: Amox. 250mg.; Duravent 20,
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Allergic rhinitis; Acute pharyngitis;

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hypertrophy; left ventricular abnormalities; mildly dilated left
atrium; mild aortic insufficiency; mild tricuspid; estimated
pulmonary pressure 30 to 35 mm

“Residuals of Acne” where rating specialist determined condition was
not related to veteran military service, committed clear and unmistakable
error where Service Department Medical Care reported:

February 9, 1994 date veteran treated for Acne,
prescribed Retin A, Doxycyclie; Service
Department Dermatology treatment dated June,
1994 improved Acne, use sunscreen, Doxy 10mg.

[R.at pg.67] note denied acne based on 11/26/2013 VA contract
exam noted had been resolved; rating specialist noted reviewed
veteran private treatment records; YET failed to note RESULTS
of medical evidence reviewed [R.at pg.36] Gonzaba Medical
Center 11/18/2011 to 09/24/2012 treatment records; VA
Treatment records dating from February 2014 to April 2015.

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require Veteran to wear a respiratory device when performing duties
{handling toxic chemicals and contaminated waste}

Service duties involving exposure to asbestos or other chemicals,
required veteran compliance with "Voluntary Wearing of Respiratory
Protection Device" and signature of veteran confirming notification;
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*Hemoglobin.....[L].....12.8 g/dL.range 13.2 to 17.1
*Hematocrit.....[L].....36.8%.....range 38.5 to 50.0
*PSA.....0.4.....range 4.0

[R.at pg.73] note Glucose [HI]; Urea Nitrogen [HI]; Alkaline Phosphat [LO]; HCT [LO] ASSESSMENT: (1) HTN stable on Benicar; (2) Chronic low back pain; stable on tranmadol, skelatin; naproxen; (3) GERD, on omeprazole; (4) Hypothyrodism subclinical, continue to monitor.

ARGUMENT

Board of Veterans Appeals June 2019 decision failed to explain in detail how it complied with requirements specified in *Walker v*

Shinseki, 708 F.3d 1331, 1336 (Fed. Cir. 2/21/2013) “continuity of symptomatology may be used in place of nexus “[i]f evidence of a chronic condition is noted during service or during the presumptive period, but the chronic condition is not ‘shown to be chronic, or where the diagnosis of chronicity may be legitimately questioned.’ *i.e.*, ‘when the fact of chronicity in service is not adequately supported;” *Walker* also states that “in the situation where the veteran cannot establish a chronic disease ‘shown’ in the presumptive period for purposes of section 3.303(b) but can point to a chronic condition that was noted in the presumptive period but the notation was insufficient to support a diagnosis beyond legitimate question ... the veteran can benefit from continuity of symptomatology to establish service connection”

WHERE Board relied on a singular November 2013 VA Hearing Examination and veteran lay evidence of record does not demonstrate a Hearing loss for VA purposes in contradictory with VA Fast Letter 10-35 state: “A Veteran is competent to report symptoms of hearing loss and/or tinnitus as a disability because symptoms of hearing loss and tinnitus are

capable of lay observation. See, *Charles v. Principi*, 16 Vet. App. 370 (2002); & *Espiritu v. Derwinski*, 2 Vet. App. 492 (1992). Consequently, a veteran's testimony regarding hearing loss and/or tinnitus is sufficient to serve as evidence that the disability (ies) currently exists." Where the Board or the RO grant service connection for the Veteran's [tinnitus] in its decision, and because the examiner in the 11/26/2013 [R.at pg.230] opinion noted that the Veteran's [tinnitus] was at least as likely as not due to associated reported history and military medical records, and at least as likely as not associated with noise exposure, service connection for hearing loss is also warranted on the basis that for tinnitus to be due to ringing in the ears hearing loss, the hearing loss must have existed during active service when [tinnitus] first manifest.

Board [R.at pg.7] state on one hand "FIRST, there is no current diagnosis of acne; then on the other hand state: "but there was a 2010 diagnosis for pharyngitis; SECOND, state STR's are positive for acne and pharyngitis; THIRD, state Board finds [not RO] that the evidence of record does not support a finding that acne or pharyngitis are related to

service; FOURTH state that the Board finds veteran competent to state he has had symptoms or pharyngitis, or that he has acne; but does not have the requisite medical training, expertise, or credentials needed to diagnosis a disease; is contradictory with *Walker v Shinseki*, 708 F.3d 1331, 1336 (Fed. Cir. 2/21/2013) “continuity of symptomatology,” and a misinterpretation of the following facts: “The lack of contemporaneous medical evidence is a factor in determining credibility of lay evidence, but lay evidence does not lack credibility merely because it is unaccompanied by contemporaneous medical evidence. *See, Buchanan v. Nicholson*, 451 F.3d 1331, 1337 (Fed. Cir. 2006) (noting that the lack of contemporaneous medical records does not serve as an “absolute bar” to the service connection claim); *Barr v. Nicholson*, 21 Vet. App. 303 (2007) (noting that the “Board may not reject as not credible any uncorroborated statements merely because the contemporaneous medical evidence is silent as to complaints or treatment for the relevant condition or symptoms”). There is no other basis, other than the silence of service records, upon which to question the credibility of the Veteran’s reports.

Board conclude that the Veteran did not identify any chronic disability related to service that was manifested by abnormal lab results, WHERE Board failed to evaluate as sign or symptom which may be manifestation of an [undiagnosed illness] where laboratory test that cannot be [or has not yet been] attributed to any known clinical diagnosis; but indication of possible life threatening condition not yet reaching incubation maturity.

CONCLUSION

WHEREFORE based on the evidence and arguments presented above by the Veteran, the Court is requested to Vacate and Remand Board June 21, 2019 decision for proper readjudication.

Respectfully Submitted



Randy Lee Williams
10819 Sierra Glen Drive
San Antonio, Texas

CERTIFICATE OF SERVICE

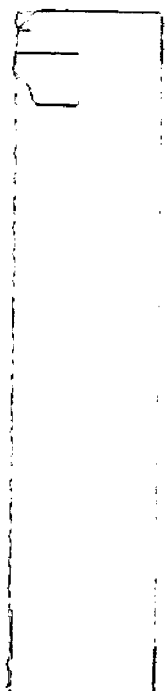
I certify that on this 21 day of October 2019 Veteran filed the following Informal Brief in Support of Appeal with the U.S. Court of Appeals for Veterans Claims, 625 Indiana Avenue, NW, Suite 900, Washington, D.C. 20004 with copy to the Office of the General Counsel, 810 Vermont Avenue, NW., Washington, D.C. 20420, sent by certified mail.

Respectfully Submitted



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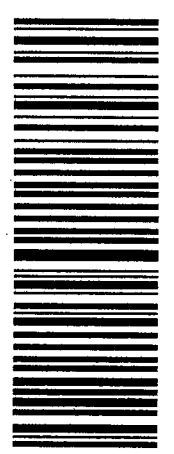
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