

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 REPLY IN RESPONSE TO APPELLEE BRIEF

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

**UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS
625 INDIANA AVENUE, NW SUITE 900
WASHINGTON, D.C. 20004**

RANDY L. WILLIAMS,
Appellant

v.

Vet. App. #19-4993

ROBERT L. WILKIE
Secretary, of Veterans Affairs,
Appellee

**APPELLANT REPLY IN RESPONSE TO APPELLEE BRIEF
DATE FEBRUARY 10, 2020 PURSUANT TO RULE 28 (C)**

Appellant (Randy L. Williams) pursuant to Rule of Practice and Procedures file the following reply in response to Appellee brief dated February 10, 2020 in accordance with Rule 28 (c).

Appellee [Br.at pg. 5-6] Summary of the Arguments request the Court to affirm Board July 21, 2019 decision that denied Veteran entitlement to service connection for: BHL {bilateral hearing loss}; residuals of acne; pharyngitis; and symptoms & defects due to abnormal lab results; concluding Appellant failed to establish he has a current disability; conditions seeking service connection are not chronic under 38 CFR section 3.309(a); failed to assert any evidence the Board

improperly weighed, in November 2013 VA examinations; or improperly declined to address December 2013 RO rating decision committed CUE, as there is no final decision; and fail to consider theory of entitlement to presumption of service connection based on an [Undiagnosed Illness] related to a [metabolic disorder] resulting in a combination of abnormal chemical lab results.

Appellee [Br.at pg.2-3] Relevant Factual and Procedural History failed to provide a complete Appellant *service treatment* history and in *service duty exposure to toxic chemical* as referenced below:

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	96106.....117

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.

and contradictory to Appellee argument [Br.at pg.2-3] of Relevant Factual and Procedural Appellant History that failed to provide a complete Appellant *Private treatment* history as referenced below:

Private treatment records from September, 2004

Private treatment records from Nov. 2011 to Sept. 2012

VA contract examination from Nov. 2013

VA Outpatient treatment records from Feb.2014 to Apr.2015

WHERE Appellee conceded Veteran was seeking service connection but, where Board determined “not chronic under 38 CFR section 3.309(a); identified by Appellant [metabolic panel disorder] relative with to 38 CFR section 3.317(a)(4)&(b) regulatory provisions that note [sign or symptom of an Undiagnosed illness] is a chronic disease as listed in section 3.309(a) See, Walker, 708 F.3d at 1338-39 (holding that only those chronic diseases; to now include {signs or symptoms} listed in section 3.317(a) may qualify for service connection under section 3.303(b) chronicity & continuity; and 38 CFR section 3.307 (2019) (providing for presumptive service connection for chronic diseases listed in section 3.309(a), tropical diseases, diseases specific to prisoners of war, diseases resulting from herbicide exposure; and now signs and

symptoms related to Undiagnosed Illnesses determined an early symptom long preceding the development of those Diseases in their more obvious forms such as: {DM-II; Infections; GERD; Cancer; kidney failure; liver disease; respiratory disease; etc.} contributing to a shorter life expectancy of the veteran, affecting [growth, energy production, elimination of waste; other body functions] based on the following

Metabolic Panel abnormalities:

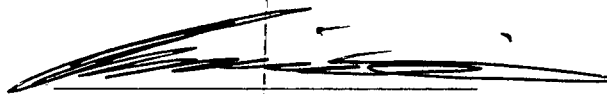
Veteran private physician 9/14/12 Lab Report verify MULTIPLE ABNORMALITIES in Veteran Metabolic Panel(s) caused and/or aggravated due to Veteran in-service exposure to {toxic chemicals and contaminated waste} contributing to the following elevated Comprehensive Metabolic Panel(s):

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

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

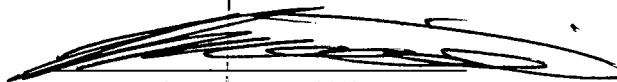


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CERTIFICATE OF SERVICE

I certify that on this 27 day of February 2020 Veteran filed the following Reply in Response to Appellee Brief 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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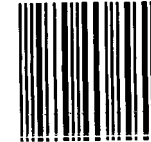
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