

In The
UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

Kathy Gardner-Dickson,)	
Petitioner,)	No. 19-4765
)	
v.)	Third <i>Solze</i> Notice
)	
Robert L. Wilkie,)	
Secretary of Veterans Affairs,)	
<u>Respondent.</u>)	

Undersigned provides the Court with the attached March 22, 2020, rating decision which denied service connection for the cause of Mr. Dickson’s death. This information is relevant because despite the Board of Veterans’ Appeals finding in its April 2, 2019, decision that “the record contains no evidence contradicting the Veteran’s reports,” Board Dec. at 2, the Secretary concluded that “entitlement to service connection for the cause of the Veteran’s death is denied *since evidence fails to show that it was related to military service.*” Att. at 2 (emphasis added). Thus, Mrs. Gardner-Dickson, like Mr. Dickson before her, remains suspended in appellate limbo bouncing between the Board and the Agency of Original Jurisdiction (“AOJ”). Indeed, it is precisely this type of “left hand, right hand” incoherence that this Court’s review of facially erroneous Board remands would largely resolve.

Indeed, this decision extends the string of obvious errors from the Board to the AOJ. For example, although the Board decision was issued just two weeks short of a year before, it is not even mentioned in the AOJ rating decision. Thus, at a minimum, the rating decision is premature because resolution of Mr. Dickson's claimed exposure to herbicides is necessary before resolving the question of service-connection of Mr. Dickson's conceded cardiac condition. In any event, the AOJ's evidentiary conclusion cannot reasonably be reconciled with the Board's evidentiary finding.

Mrs. Gardner-Dickson, therefore, prays that the Court consider the attached rating decision during its consideration of the issues currently before it.

Respectfully submitted,

/s/ Douglas J. Rosinski
701 Gervais St., Ste. 150-405
Columbia, SC 29201-3066
803.256.9555 (tel)
888.492.3636 (fax)
djr@djrosinski.com
Counsel to Kathy Gardner-Dickson

Attachment to 3d Solze Notice



DEPARTMENT OF VETERANS AFFAIRS Veterans Benefits Administration Regional Office

Herbert Dickson

VA File Number

**Rating Decision
03/21/2020**

INTRODUCTION

The records reflect that HERBERT E. DICKSON was a Veteran of the Vietnam Era. The Veteran served in the Air Force from April 14, 1966 to February 13, 1970. The Veteran died on November 9, 2019 and an original death claim was received on January 26, 2020. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

Service connection for cause of death is denied.

EVIDENCE

- Service treatment and personnel records for period April 14, 1966 to February 13, 1970
- VAMC (Veterans Affairs Medical Center) treatment records, Saisbury, from June 28, 2002 through February 3, 2020
- VAMC (Veterans Affairs Medical Center) treatment records, Durham, from July 26, 2002 through July 12, 2005
- VA Form 21-534EZ, Application for DIC, Death Pension, and/or Accrued Benefits, received January 26, 2020
- VA Form 21-0966, Intent to File a Claim for Benefits, received January 26, 2020



- Veteran's Death Certificate, received January 26, 2020
- Marriage Certificate, dated January 26, 2020
- Duplicate source document received January 31, 2020
- VA letter concerning your claim, dated February 7, 2020
- VA letter concerning your claim, dated February 12, 2020

REASONS FOR DECISION

Service connection for the cause of death.

We reviewed the Veteran's prior claims for coronary artery disease and note that we denied service connection. We notified the Veteran of our decision on July 6, 2016 and the Veteran appealed this issue on April 5, 2017. The continued appeal was pending at death.

The death of a Veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the primary or contributory cause of death.

The Veteran passed away on November 9, 2019. Prior to death, the Veteran was service connected for no condition. The Death Certificate recorded the Veteran's primary cause of death as chronic systolic heart failure .

The Veteran's service treatment records are silent for any findings, complaints, or treatment of chronic systolic heart failure .

We received your submission of a fully developed claim form indicating that you were aware of what information was needed to decide your claim, that you have no additional evidence to submit regarding your claim and that you wish to have a decision rendered as soon as possible. We have reviewed treatment records from Salisbury and Durham VAMC's. However, as of the date of this rating, we have not received medical evidence indicating that the Veteran's chronic systolic heart failure was incurred in-service or caused by injury or disease that began during a period of active duty service.

There is no evidence that any cardiovascular disease was manifest to a compensable degree within one year of the Veteran's discharge from service for presumptive consideration.

Based on these findings, entitlement to service connection for the cause of the Veteran's death is denied since evidence fails to show that it was related to military service. {38 CFR 3.312}

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the



Herbert Dickson

3 of 3

regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, www.va.gov.

