

WALTER P. JONES,)
Petitioner,)
)
v.) Vet. App. No. 22-1216
)
DENIS MCDONOUGH,)
Secretary of Veterans Affairs,)
Respondent.)

Pursuant to U.S. Vet. App. Interim E-Rule 7, the Secretary hereby provides a table of contents for the attachments to his response to the Court's order.

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**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

WALTER P. JONES,)	
)	
Petitioner,)	
)	
v.)	Vet. App. No. 22-1216
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Respondent.)	

RESPONDENT'S RESPONSE TO THE COURT'S MAY 4, 2022 ORDER

On March 1, 2022, Petitioner filed a Petition for a Writ of Mandamus asking the Court to compel VA to adjudicate his claim of entitlement to disability compensation for ischemic heart disease and award the maximum rating and the earliest effective date permitted by law, including but not limited to a claim for aid and attendance. (Petition at 1, 16). The Secretary filed a response to the Petition on April 6, 2022.

On May 4, 2022, the Court ordered the Secretary, not later than 30 days later, to file an additional response providing the following information: (1) whether the VA Military Records Research Center (MRRC) research request submitted on Petitioner's claim has been expedited, (2) whether the research request pertains to Petitioner's claimed service in Cambodia, and (3) the specifics of the backlog at the MRRC due to the COVID-19 pandemic, including the typical response time from the MRRC, both now and prior to the pandemic, the size of the backlog, or

where Petitioner's claim falls within the MRRC's queue. The Secretary hereby responds to the Court's inquires.

The answer to the Court's first question, *i.e.*, whether the MRRC request has been expedited, is yes. On May 10, 2022, the Agency of Original Jurisdiction (AOJ) requested that Petitioner's research request be expedited due to extreme financial hardship and potential homelessness. (Exhibit 1). The MRRC responded by indicating that Petitioner's MRRC request had been identified for priority processing. *Id.* The following day, the MRRC completed the research request and provided a negative response indicating that verification was requested of reported herbicide exposure during Petitioner's service at Korat Royal Thai Air Force Base (RTAFB) in Thailand in 1962 and "no evidence was located to support documentation of the claimed incident/event." (Exhibit 2).

The answer to the Court's second question, *i.e.*, whether the research request pertains to service in Cambodia, is no. The research request was initiated pursuant to a January 5, 2021 Board remand, which directed the AOJ to request verification of reported herbicide exposure during Petitioner's service "at Korat RTAFB in Thailand in 1962." (Exhibit 3, pg. 2). Attached to this response is a Declaration from Roderick L. Hamilton (Hamilton Declaration), a Supervisor at the Decision Review Operations Center in Washington DC (DROC-DC), dated May 18, 2022. The Hamilton Declaration confirms that a research request has not been submitted related to claimed herbicide exposure in Cambodia because such development was not ordered in the January 2021 Board decision. (Exhibit 4).

Finally, the Court requested information regarding the specifics of the backlog at the MRRC due to the COVID-19 pandemic, including the typical response time from MRRC, both now and prior to the pandemic, the size of the backlog, or where Petitioner's claim falls within the MRRC's queue. The AOJ was unable to provide information regarding the typical response time for research requests (either now or prior to the pandemic) because each request is unique and necessarily requires different levels of research. The AOJ was also unable to provide information regarding the size of the MRRC backlog, however, the research request initiated on Petitioner's claim was completed on May 11, 2011. (Exhibit 2, Exhibit 4). Therefore, Petitioner's claim is no longer in the MRRC's queue.

Finally, the Secretary notes that on May 13, 2022, after the development mandated by the Board's January 5, 2021 remand, including the MRRC research request, was completed, Petitioner's claim for service connection for ischemic heart disease was reviewed and denied by the AOJ in a Supplemental Statement of the Case (SSOC). (Exhibit 5). As the Hamilton Declaration indicates, this claim will be certified to the Board for re-adjudication on June 10, 2022. (Exhibit 4); see *also* 38 C.F.R. § 19.38 (following a 30-day period allowed for a response to the SSOC, the case will be returned to the Board for further appellate processing).

The Secretary respectfully submits that, inasmuch as Petitioner has been afforded the relief sought, *i.e.*, adjudication of his claim for service connection for ischemic heart disease, his Petition is now moot. See *Thomas v. Brown*, 9

Vet.App. 269, 270–71 (1996) (per curiam order) (when the relief sought by a petition for extraordinary relief has been afforded, the petition is moot); *Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) (per curiam) (“When there is no case or controversy, or when a once live case or controversy becomes moot, the Court lacks jurisdiction.”); *see also Wolfe v. McDonough*, 28 F.4th 1348 (Fed. Cir. 2022) (“a mandamus order could only compel action on the appeal” rather than ‘dictate a particular outcome.’”). The Secretary respectfully requests that the Court dismiss the Petition as moot because Petitioner has been afforded the relief requested.

WHEREFORE, Respondent, Denis McDonough, Secretary of Veterans Affairs, respectfully responds to the Court’s May 4, 2022, Order.

Respectfully submitted,

RICHARD A. SAUBER
General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Sarah E. Wolf
SARAH E. WOLF
Deputy Chief Counsel

/s/ Debra L. Bernal
DEBRA L. BERNAL
Senior Appellate Counsel
Office of the General Counsel (027C)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 632-4305

For the Secretary of Veterans Affairs

EXHIBIT 1

From: [REDACTED] [MRRRC](#)
To: [Hamilton, Rodrick](#)
Cc: [REDACTED] [MRRRC](#); [REDACTED]
Subject: RE: Request for Expedited Research
Date: Tuesday, May 10, 2022 10:52:26 AM
Attachments: [image002.jpg](#)
[image003.png](#)

Thank you for contacting the VBA Military Records Research Center (MRRRC).

The MRRRC request has been identified for priority processing.

Respectfully,

VBA Military Records Research Center
Office of Field Operations



MRRRC/SG

From: Hamilton, Rodrick [REDACTED]
Sent: Tuesday, May 10, 2022 8:11 AM

[REDACTED]
Subject: Request for Expedited Research
Importance: High

Good morning,

I would like to request the research for the veteran listed below be expedited due to Extreme Financial Hardship and Potential Homelessness. Thank you in advance for your assistance.

WALTER POPE JONES File #: [REDACTED]
DOC: 05/05/2021

Rodrick L. Hamilton
Coach
Decision Review Operations Center (DROC)
1722 I Street NW
Washington, DC 20421
[REDACTED]

EXHIBIT 2

Records Research Response

Name: WALTER JONES	Type: Exposure
SSN: [REDACTED]	Status: Response Provided

Exposure Incident

Military Branch: ARMY	Exposure Start: 08/01/1962
Unit Assignment: Co C 1st BG 27th INF APO 25	Exposure End: 08/21/1962
Ship Name:	Location: Korat, Thailand
Hull Number:	

Exposure Circumstance

Request verification of reported herbicide exposure during the Veteran's service at Korat Royal Thai Air Force Base (RTAFB) in Thailand in 1962. Attempt to verify whether his reports of patrolling the perimeter of the base while stationed at Korat RTAFB are consistent with his military occupational specialty or his unit of assignment.

Synopsis

A professional researcher from the Veterans Benefits Administration, Office of Field Operations, Military Records Research Center, has completed comprehensive research on the Veteran's claimed exposure event while assigned to Company C, 1st Battle Group, 27th Infantry from April 19, 1962 to August 21, 1962. The Veteran claims he was exposed to herbicide while serving at Korat Royal Thai Air Force Base due to patrolling the perimeter of the base. In an attempt to substantiate the Veteran's claimed stressor/exposure event. We requested records from National Archives and Records Administration (NARA), the custodian of Army unit records for 1962. NARA was unable to locate the 1962 unit history for 1st Battle Group, 27th Infantry or the higher headquarters, 25th Infantry Division. In conclusion, no evidence was located to support documentation of the claimed incident/event.

EXHIBIT 3



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

WALTER P. JONES, JR.

Represented by

Christopher F. Attig, Attorney

[REDACTED]
Docket No. 15-18 857A

Advanced on the Docket

DATE: January 5, 2021

REMANDED

Service connection for ischemic heart disease.

REASONS FOR REMAND

In February 2019, the Board denied entitlement to service connection for ischemic heart disease. In April 2020, the Court Clerk issued a joint motion for remand (JMR) which vacated the February 2019 Board decision and remanded the claim to the Board.

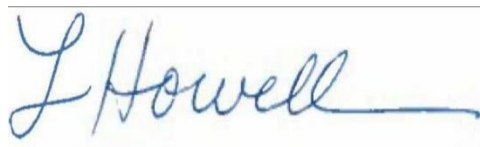
The Veteran contends that he was exposed to herbicides during service because his duties required him to work around the perimeter of Korat Royal Thai Air Force Base (RTAFB). Further, he claims that he held a "secret final" security clearance and that outstanding classified records may hold conclusive evidence that he was stationed in areas sprayed with herbicides.

Consistent with the terms of the JMR, a remand is required to submit a request for the Joint Services Records Research Center (JSRRC) to review the unit history records from the period that the Veteran served at Korat RTAFB in Thailand in 1962. Additional development is required to verify herbicide exposure and whether the Veteran's report of patrolling the perimeter of the base is consistent with his military occupational specialty.

The matter is REMANDED for the following actions:

1. Identify and obtain any pertinent, outstanding VA and private treatment records and associate them with the claims file.
2. Obtain any outstanding service personnel records from the appropriate sources, to include the Veteran's record of assignments and any classified service records.
3. Contact the JSRRC and request verification of reported herbicide exposure during the Veteran's service at Korat RTAFB in Thailand in 1962.

The JSRRC should attempt to verify whether his reports of patrolling the perimeter of the base while stationed at Korat RTAFB are consistent with his military occupational specialty or his unit of assignment.



L. HOWELL
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

T. Kokolas, Associate Counsel

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.

EXHIBIT 4

**Decision Review Operations Center
Washington DC 20421**

May 18, 2022

Declaration of Rodrick L. Hamilton

I, Rodrick L. Hamilton, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury the following:

- I. I am a Supervisor at the Decision Review Operations Center, Washington DC (DROC-DC) for the Veterans Benefits Administration (VBA) of the Department of Veterans Affairs. This declaration is provided in response to the U.S. Court of Appeals for Veterans Claims, in the case of (**Walter P. Jones**), which instructed the Secretary to address the allegations contained in Mr. Jones petition for a writ of mandamus and provide any documentation necessary to aid the Court's resolution of this matter.
- II. The information contained in this declaration is based on the DROC-DC's review of the information available in Mr. Jones electronic claims file located within the Veterans Benefits Management System (VBMS).
- III. On April 4, 2022, a review of Mr. Jones electronic claims folder was conducted.
- IV. Mr. Jones is seeking entitlement to service connection for ischemic heart disease due to Herbicide Exposure in Thailand.
- V. On January 5, 2021, the Board of Veterans' Appeals remanded Mr. Jones appeal to obtain information related to Mr. Jones, Thailand service and to verify herbicide exposure while stationed in Thailand.
- VI. On January 6, 2021, development actions began by sending Mr. Jones a development letter requesting information for any private providers that provide(d) treatment for ischemic heart disease. No response was received.
- VII. On March 25, 2021, a request was made to NPRC to furnish dates of service in Vietnam as well as any documents show exposure to herbicides. On April 12, 2021, NPRC responded that all available Army personnel and medical records were uploaded to VBMS.
- VIII. On March 25, 2021, a request was submitted to Records Research to verify Mr. Jones, exposure to herbicides while assigned to Korat RTAB in Thailand from April 19, 1962, to July 31, 1962.

- IX. Unfortunately, due to the ongoing COVID-19 pandemic, the RRC has a severe backlog. A review of the request shows that his has been assigned to a research specialist. Once a response has been received, VBA will have taken all necessary steps to attempt to corroborate Mr. Jones alleged exposure to herbicides while stationed in Thailand. VBA allows 30 days between follow ups on these specific records.
- X. On May 10, 2022, another review was conducted of Mr. Jones electronic claims folder it was determined that the MRRC request was still pending in an assigned status. A review of the MRRC Field playbook provided a way to attempt to expedite research request for special cases. An expedited request has been submitted due to Mr. Jones' failing health and extreme financial hardship.
- XI. On May 11, 2022, a negative research response was received from MRRC in regard to the alleged agent orange exposure in Thailand. No request was submitted or received for exposure in Cambodia as that was not ordered in the January 2021 BVA decision.
- XII. On May 13, 2022, Mr. Jones claim was reviewed and rated, all issues were denied, and a Supplemental Statement for the Case was issued and is pending due process before recertification back to the board on June 10, 2022.
- XIII. DROC DC has taken all necessary steps outlined in the January 5, 2021, BVA Remand. A decision has been issued no further action can be taken on behalf of the agency at this time.

I certify, under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

Rodrick L.
Hamilton 674228

Digitally signed by Rodrick L.
Hamilton 674228
Date: 2022.05.18 14:47:40
-04'00'

Rodrick Hamilton

EXHIBIT 5



DEPARTMENT OF VETERANS AFFAIRS

May 13, 2022

WALTER JONES
9290 NW 98TH TRL
LAKE BUTLER FL 32054-5009

In reply, refer to:
ARC/GRB
File Number: [REDACTED]
WALTER JONES

Dear Walter Jones:

Enclosed is a "Supplemental Statement of the Case" (SSOC). It is not a decision on any new issues, but is intended to inform you of any material changes in, or additions to, the information contained in the "Statement of the Case" (SOC) that we previously sent to you. The following information will help you decide how to respond. We encourage you to discuss this with your representative, if you have one.

Your appeal was sent back to us by the Board of Veterans' Appeals (the Board) for further development, which has been completed. Before returning your appeal to the Board, we are giving you a period of time to respond with additional comments or evidence. Please note that a response at this time is optional and is not required to continue your appeal.

- If you wish to respond, you have 30 days from the date of this letter to respond. There is no special form to use. You can simply write to us and tell us in your own words what you disagree with in this SSOC and why.
- If you do not wish to respond, and you do not want us to wait for the 30 days to expire, you can write to us and let us know that. If you do not respond, the Board will consider what you have already submitted in deciding your appeal.

We hope that the above information is helpful.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.



File Number: [REDACTED]
JONES, WALTER P

If you	Here is what to do.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.com/ .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Correspondence</i> chart, below.

In all cases, be sure to refer to your VA file number [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our web site at <https://www.va.gov> or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.com/>.

We sent a copy of this letter to CHRISTOPHER F ATTIG because you appointed them as your representative. If you have questions or need assistance, you can also contact them.

Thank you for your service,

Regional Office Director

Regional Office Director

Enclosure(s): VA Form 20-0998
Where to Send Correspondence

cc: CHRISTOPHER F ATTIG
Christopher F. Attig
P.O. Box 250724
Little Rock, AR 72225

DROC-DC Coversheet
30-Day Waiver Form
VA Modernized Decision Review system SOC/SSOC Opt-In Fact Sheet
On August 23, 2017, the President signed into law the Veterans Appeals



Improvement and Modernization Act of 2017 (Appeals Modernization Act), creating a modernized review system for claims and appeals. The modernized appeals system took effect on February 19, 2019, and provides streamlined choices for seeking review of your VA claim decision. You are eligible to opt-in to this new process based on your receipt of this Statement of the Case or Supplemental Statement of the Case. If you continue to disagree with our decision, please refer to the enclosed fact sheet for a more thorough explanation of your decision review options and submission deadlines should you decide to opt-in. If you wish to remain in the legacy process, please follow the instructions above regarding actions required to request further review of your appeal.



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ISSUE:

1. Entitlement to service connection for ischemic heart disease.

EVIDENCE:

- Service personnel records, received April 12, 2021
- VA Medical Center (VAMC) Gainesville treatment records dated December 22, 2020 to May 11, 2022
- Response, received from Records Research Center, May 11, 2022

ADJUDICATIVE ACTIONS:

01/05/2021 The appeal was remanded by the Board of Veterans' Appeals for additional development, pursuant to the Veterans Claims Assistance Act (VCAA).

01/06/2021 Duty To Assist Letter Sent

PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol "§" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement of all Veteran benefits.

§3.102 (New) - Reasonable doubt.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine



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is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships. (Authority: 38 U.S.C. 501(a))

§3.159 (New) - Department of Veterans Affairs assistance in developing claims.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) Competent medical evidence means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions. Competent medical evidence may also mean statements conveying sound medical principles found in medical treatises. It would also include statements contained in authoritative writings such as medical and scientific articles and research reports or analyses.

(2) Competent lay evidence means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.

(3) Substantially complete application means an application containing the claimant's name; his or her relationship to the veteran, if applicable; sufficient service information for VA to verify the claimed service, if applicable; the benefit claimed and any medical condition(s) on which it is based; the claimant's signature; and in claims for nonservice-connected disability or death pension and parents' dependency and indemnity compensation, a statement of income.

(4) For purposes of paragraph (c)(4)(i) of this section, event means one or more incidents associated with places, types, and circumstances of service giving rise to disability.

(5) Information means non-evidentiary facts, such as the claimant's Social Security number or address; the name and military unit of a person who served with the veteran; or the name and address of a medical care provider who may have evidence pertinent to the claim.

(b) VA's duty to notify claimants of necessary information or evidence.

(1) When VA receives a complete or substantially complete application for benefits, it will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim. VA will inform the claimant which information and evidence, if any, that the claimant is to provide to VA and which information and evidence, if any, that VA will attempt to obtain on behalf of the claimant. VA will also request that the claimant provide any evidence in the claimant's possession that pertains to the claim. If VA does not receive the necessary information and evidence requested from the claimant within one year of the date of the notice, VA cannot



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pay or provide any benefits based on that application. If the claimant has not responded to the request within 30 days, VA may decide the claim prior to the expiration of the one-year period based on all the information and evidence contained in the file, including information and evidence it has obtained on behalf of the claimant and any VA medical examinations or medical opinions. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the request, VA must readjudicate the claim. (Authority: 38 U.S.C. 5103)

(2) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. (Authority: 38 U.S.C. 5102(b), 5103A(3))

(c) VA's duty to assist claimants in obtaining evidence. Upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. In addition, VA will give the assistance described in paragraphs (c)(1), (c)(2), and (c)(3) to an individual attempting to reopen a finally decided claim. VA will not pay any fees charged by a custodian to provide records requested.

(1) Obtaining records not in the custody of a Federal department or agency. VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency, to include records from State or local governments, private medical care providers, current or former employers, and other non-Federal governmental sources. Such reasonable efforts will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request. A follow-up request is not required if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile. If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, then reasonable efforts will include an initial request and, if the records are not received, at least one follow-up request to the new source or an additional request to the original source.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including the person, company, agency, or other custodian holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records. (Authority: 38 U.S.C. 5103A(b))

(2) Obtaining records in the custody of a Federal department or agency. VA will make as many



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requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to military records, including service medical records; medical and other records from VA medical facilities; records from non-VA facilities providing examination or treatment at VA expense; and records from other Federal agencies, such as the Social Security Administration. VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include those in which the Federal department or agency advises VA that the requested records do not exist or the custodian does not have them.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal agency or department custodians. If requested by VA, the claimant must provide enough information to identify and locate the existing records, including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. In the case of records requested to corroborate a claimed stressful event in service, the claimant must provide information sufficient for the records custodian to conduct a search of the corroborative records.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records. (Authority: 38 U.S.C. 5103A(b))

(3) Obtaining records in compensation claims. In a claim for disability compensation, VA will make efforts to obtain the claimant's service medical records, if relevant to the claim; other relevant records pertaining to the claimant's active military, naval or air service that are held or maintained by a governmental entity; VA medical records or records of examination or treatment at non-VA facilities authorized by VA; and any other relevant records held by any Federal department or agency. The claimant must provide enough information to identify and locate the existing records including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. (Authority: 38 U.S.C. 5103A(c))

(4) Providing medical examinations or obtaining medical opinions.

(i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim, but:

(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;



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(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in §3.309, §3.313, §3.316, and §3.317 manifesting during an applicable presumptive period provided the claimant has the required service or triggering event to qualify for that presumption; and

(C) Indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.

(ii) Paragraph (4)(i)(C) could be satisfied by competent evidence showing post-service treatment for a condition, or other possible association with military service.

(iii) Paragraph (c)(4) applies to a claim to reopen a finally adjudicated claim only if new and material evidence is presented or secured. (Authority: 38 U.S.C. 5103A(d))

(d) Circumstances where VA will refrain from or discontinue providing assistance. VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently incredible or clearly lack merit; and

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law. (Authority: 38 U.S.C. 5103A(a)(2))

(e) Duty to notify claimant of inability to obtain records.

(1) If VA makes reasonable efforts to obtain relevant non-Federal records but is unable to obtain them, or after continued efforts to obtain Federal records concludes that it is reasonably certain they do not exist or further efforts to obtain them would be futile, VA will provide the claimant with oral or written notice of that fact. VA will make a record of any oral notice conveyed to the claimant. For non-Federal records requests, VA may provide the notice at the same time it makes its final attempt to obtain the relevant records. In either case, the notice must contain the following information:



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- (i) The identity of the records VA was unable to obtain;
 - (ii) An explanation of the efforts VA made to obtain the records;
 - (iii) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and
 - (iv) A notice that the claimant is ultimately responsible for providing the evidence.
- (2) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the records and request that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will request that the claimant obtain the records and provide them to VA. (Authority: 38 U.S.C. 5103A(b)(2))
- (f) For the purpose of the notice requirements in paragraphs (b) and (e) of this section, notice to the claimant means notice to the claimant or his or her fiduciary, if any, as well as to his or her representative, if any. (Authority: 38 U.S.C. 5102(b), 5103(a))

§3.309(e) (effective 09-2013) - Disease subject to presumptive service connection

Disease associated with exposure to certain herbicide agents. If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of 3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of 3.307(d) are also satisfied.

- AL amyloidosis
- Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)
- Chloracne or other acneform disease consistent with chloracne
- Hodgkin's disease
- Ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable and Prinzmetal's angina)
- All chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and chronic lymphocytic leukemia)
- Multiple myeloma
- Non-Hodgkin's lymphoma
- Early-onset peripheral neuropathy



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Porphyria cutanea tarda
 Prostate cancer
 Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)
 Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

Note 1: The term soft-tissue sarcoma includes the following:

Adult fibrosarcoma
 Dermatofibrosarcoma protuberans
 Malignant fibrous histiocyoma
 Liposarcoma
 Leiomyosarcoma
 Epithelioid leiomyosarcoma (malignant leiomyoblastoma)
 Rhabdomyosarcoma
 Ectomesenchymoma
 Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
 Proliferating (systemic) angioendotheliomatosis
 Malignant glomus tumor
 Malignant hemangiopericytoma
 Synovial sarcoma (malignant synovioma)
 Malignant giant cell tumor of tendon sheath
 Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid
 malignant schwannomas
 Malignant mesenchymoma
 Malignant granular cell tumor
 Alveolar soft part sarcoma
 Epithelioid sarcoma
 Clear cell sarcoma of tendons and aponeuroses
 Extraskelatal Ewing's sarcoma
 Congenital and infantile fibrosarcoma
 Malignant ganglioneuroma

Note 2: For purposes of this section, the term ischemic heart disease does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke, or any other condition that does not qualify within the generally accepted medical definition of Ischemic heart disease.

(Authority: 38 U.S.C. 501(a) and 1112(b))



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VA, in determining all claims for benefits that have been reasonably raised by the filings and evidence, has applied the benefit-of-the-doubt and liberally and sympathetically reviewed all submissions in writing from the Veteran as well as all evidence of record.

DECISION:

1. Entitlement to service connection for ischemic heart disease is denied.

REASONS AND BASES:

1. As noted, your appeal was remanded by the Board of Veterans' Appeals for additional development, pursuant to the Veterans Claims Assistance Act (VCAA).

On January 6, 2021, we sent you a VCAA development letter asking you to submit and/or specify evidence to support your appeal. As of this date, you have not responded to this request for any additional evidence.

Your service personnel records were reviewed and considered. However, the evidence does not show entitlement to service connection for ischemic heart disease.

Your VA treatment records were reviewed and considered. However, the evidence does not show entitlement to service connection for ischemic heart disease.

Response, received from Records Research Center was that no evidence was located to support documentation of the claimed incident/event of herbicide exposure.

There is no evidence to show entitlement to service connection for ischemic heart disease.

Therefore, entitlement to service connection for ischemic heart disease, remains denied.

PREPARED BY eSigned by AMCGBYRD, DRO

APPROVED BY null

