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GUAM - CLAIMS AND CASES

12 Oct 09 - [Nov, 2009 Board of Veterans' Appeals Rules Da Nang Harbor as Inland Waterway](#)

9 Oct 09 - [June, 2009 Navy Vietnam veteran with testicular cancer](#) (not on presumptive exposure list)

3 Oct 09 - [April, 2009 Agent Orange Ruling for service on Guam](#)

22 June 09 - [March, 2009 Ruling for ALS for service on Guam](#)

30 Mar 09 - [June, 2008 Ruling that relies on medical research beyond the limited scope of the IOM](#)

28 Jan 09 - [Filing Claims for Flight Stop-over's in Vietnam from Offshore Ships](#) - and other ideas

09 Jan 09 - [May, 2008 ruling for chronic myelomonocytic leukemia](#) involving private medical opinions of record and lay statements of significance.

18 Dec 08 - [1999 Esophageal cancer award - non-Blue Water](#)

14 Dec 08 - [May, 2004 service connection for adenocarcinoma of the esophagus to Blue Water Navy veteran](#)

12 Sept 08 - [Exposure to Herbicides in Thailand is conceded](#)

16 Aug 08 - [March, 2006 service connection for peripheral neuropathy due to Agent Orange](#)

16 Aug 08 - [June, 2006 Service Connection for Peripheral Neuropathy due to Agent Orange](#)

14 July 08 - [April, 2008 ruling for visitation on land using single buddy letter](#)

5 June 08 - [October, 1998 ruling for cancer from Agent Orange exposure for "service in the waters offshore"](#)

13 Apr 08 - [October 30, 2003 AO Exposure while offshore Vietnam](#)

8 Apr 08 - [August 30, 2006 AO Exposure Da Nang Harbor + Boots-on-Ground](#)

8 Apr 08 - [April, 2005 AO Exposure Da Nang Harbor](#)

8 Apr 08 - [March, 2005 AO Exposure Da Nang Harbor](#)

8 Apr 08 - [September, 2006 Ruling AO Exposure Da Nang Harbor](#)

8 Apr 08 - [2003 Ruling for AO Exposure in Da Nang Harbor](#)

27 Feb 08 - [12/2007 Ruling for AO Thyroid cancer from FT. Ft. McCellan, AL](#)

19 Feb 08 - [2007 Ruling for AO Exposure in Da Nang Harbor](#)

14 Feb 08 - [October 2006 BVA Ruling for Blue Water Navy Agent Orange Exposure](#)

8 Feb 08 - [July, 2004 BVA of ruling service connection for diabetes mellitus, claimed as secondary to herbicide exposure, being present in Da Nang harbor but never on shore](#)

8 Feb 08 - [Sept 12, 2006 BVA s/c ruling that VSM and off-shore service makes veteran eligible for presumptive exposure for CLL](#)

3 Dec 07 - [Guam Compensation Filing that mentions the Guam Neurological Study being conducted \(or scuttled?\) by the VA](#). This explains when the study (neurodegenerative disease of Guam) was started and what they were looking at. It still hasn't been completed. There are many of these cases and we can find none where the veteran has won.

30 Nov 07 - [1996 award for amyotrophic lateral sclerosis \(ALS\) from service on Guam 1970-72](#)

10 Sept 07 - Link to [Marine Corps Times article dated July 19, 2007 - Agent Orange on Okinawa](#)

21 July 07 - [1998 VA ruling in favor of AO exposure on Okinawa](#)

13 July 07 - [Added Page 3 to the Ruling for for service connected AO exposure from service on Guam](#) - See 1 July entry

8 July 07 - Decision in 2005 [for service connected AO exposure from service on Guam](#)

8 July 07 - Decision in 1998 for [service connected AO exposure from service in Thailand](#) and maintenance work on B-57 aircraft. Veteran had histiocytic type malignant lymphoma.

1 July 07 - Added Award Letter for sailor dated March 27, 2007 granting AO-related cancer from service on Guam. Letter shows Evidence and Reason For Decision [Image #1](#) and [Image #2](#). This case was won at the local level. [[Page 3 of Award Letter](#) added 13 July 07].

16 June 07 - Added the [GAO Findings and Recommendations Regarding DOD and VA Disability Systems](#) submitted 25 May 2007

24 Mar 07 Added a [Blue Water Navy claim for Diabetes Type II](#) for transit in Vietnam on way to Yankee Station, claim dated November, 2006.

22 Mar 07 Added a Blue Water Navy claim for compensation [DOCKET NO. 05-17 351, dated Sept. 7, 2006](#). This case was actually decided in the brief period after Haas was decided, but before the BVA Chairman issued the September 21, 2006 memorandum staying cases at the Board. A small number of Blue Water Navy veterans' claims were granted during that period based on their receipt of the Vietnam Service Medal.

5 Sept 06 Added John Wells' Reply to the Court filed this day. [Download it here](#)

14 Aug 06 - Added a [Blue Water Navy AO Exposure Claim](#) currently before the VA Court of Appeals.

This is a filing before the Veteran's Court of Appeals which directly addresses the issue of Blue Water Navy exposure. This case is still before the Court as of 8/14/06.

This filing contains specific information and references that can be cited in similar filings, including the definitions of Inland Waters and Territorial Waters, as well as several other arguments of interest and importance to the Blue Water Navy claims.

The filing was written by John Wells, a veteran, a retired USN officer (Surface Warfare not JAG) and a Chief Engineer on 3 Navy ship, who is now an attorney.

This document has been converted from a .pdf file to [a Word file](#) to remove the names of the individuals involved. In the process of doing that, some of the FORMATTING of the original document has changed, but no other changes have been made.

1 Aug 06 - Added the .pdf file of VA GUIDE TO FILING AGENT ORANGE CLAIMS. This is an important document to be familiar with. Additional information and notes have been added following the VA guide in this same .pdf file. Read it ALL !!! [Find it HERE](#). It includes information on filing AO claims EVEN IF YOU WERE NOT ON VIETNAMESE SOIL... very important to off shore Blue Water Navy activities.

May 18 - [October 2005 Agent Orange case won for service on Guam \(and 2 other non-"In-Country" locations](#)

April 4 Update - The Dingess/Hartman v Nicholson case

- [The Dingess/Hartman v Nicholson](#) case was ruled on very recently - 3 MAR 2006. It is a 33-page .pdf document available for download. A good explanation/review can be found at [2ndbattalion94thartillery.com](#)

The granting of claims involving a "presumptive exposure" for Blue Water Navy veterans has been confusing and inconsistent over the years. One primary reason for this was a change actually took place in the VA guidelines for assessment. This is very well explained in a [write-up by the National Veteran's Legal Services Program](#). That is a good place to start in understanding some of these examples of rulings in favor of Blue Water Navy presumptive exposure. Additionally, [this White Paper](#) provides an analysis of this important change to the M21-1 section of the VA Adjudication Manual.

At this current time (early 2006) the change in the VA manuals is being challenged.

SAMPLE CASE #1

Citation Nr: 0208230

Decision Date: 07/23/02 Archive Date: 07/29/02

DOCKET NO. 95-30 437) DATE

On appeal from the Department of Veterans Affairs Regional Office in Nashville, Tennessee

THE ISSUES

1. Entitlement to service connection for Hodgkin's disease, claimed as a result of Agent Orange exposure.

2. Entitlement to service connection for bladder cancer, claimed as a result of Agent Orange exposure.

REPRESENTATION

Appellant represented by: Disabled American Veterans

WITNESS AT HEARING ON APPEAL

Appellant

ATTORNEY FOR THE BOARD

M.G. Mazzucchelli, Counsel

INTRODUCTION

The veteran served on active duty from December 1972 to July 1974.

This appeal arose before the Board of Veterans' Appeals (Board) on appeal from June 1995 and November 1998 rating decisions of the Department of Veterans Affairs (VA), Nashville, Tennessee, regional office (RO).

A rating decision dated in November 2001 denied various other claims for service connection. No notice of disagreement has been received to date with respect to those claims. Additionally, in the June 2002 informal hearing presentation, the veteran's representative made argument that could be construed as raising the issue of entitlement to service connection for cancer of the prostate. That issue has not been developed for appellate review and is hereby referred to the RO for action deemed appropriate.

FINDINGS OF FACT

1. The RO has obtained all relevant evidence necessary for an equitable disposition of the veteran's appeal.
2. The veteran served aboard the U.S.S. Oriskany in the coastal waters off Vietnam for approximately 5 days in 1973.
3. The veteran currently has Hodgkin's disease.
4. The veteran's bladder cancer was not manifested in service or within the first post service year, and no medical evidence has been presented of a nexus between the veteran's presumed exposure to Agent Orange in service and his bladder cancer, diagnosed in 1987.

CONCLUSIONS OF LAW

1. Hodgkin's disease is presumed to have been incurred in service. 38 U.S.C.A. §§ 1110, 1112, 1113 (West 1991 and Supp. 2001) 1116 (as added by § 201(b) of the "Veterans Education and Benefits Expansion Act of 2001," Public Law 107-103, 115 Stat. 976 (2001) (Dec. 27, 2001)); 38 C.F.R. §§ 3.303, 3.307, 3.309(e) (2001).

2. Papillary transitional cell carcinoma of the bladder was not incurred in or aggravated by service, and may not be presumed to have been incurred therein. 38 U.S.C.A. §§ 1110, 1112, 1113, 1116 (West 1991 and Supp. 2001); 38 C.F.R. §§ 3.303, 3.307, 3.309(e) (2001).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

There has been a significant change in the law during the pendency of this appeal. On November 9, 2000, the President signed into law the Veterans Claims Assistance Act of 2000 (VCAA), 38 U.S.C.A. § 5100 et seq.; see 66 Fed. Reg. 45,620- 45,632 (Aug. 29, 2001) (to be codified at 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a)). This law eliminated the concept of a well-grounded claim, redefined the obligations of VA with respect to the duty to assist, and imposed on VA certain notification requirements.

VA has a duty to notify the appellant of any information and evidence needed to substantiate and complete a claim. 38 U.S.C.A. §§ 5102 and 5103 (West Supp. 2001); 66 Fed. Reg. 45,630 (Aug. 29, 2001) (to be codified at 38 C.F.R. § 3.159(b)). The appellant was notified in the August 1995 and August 1999 statements of the case (SOC), and in numerous supplemental statements of the case (SSOCs), of the evidence necessary to establish service connection. The Board concludes that the discussions in the SOCs, the SSOCs, and the regional office hearing adequately informed the appellant of the evidence needed to substantiate his claim and complied with VA's notification requirements.

VA also has a duty to assist the appellant in obtaining evidence necessary to substantiate the claim. 38 U.S.C.A. § 5103A (West Supp. 2001); 66 Fed. Reg. 45,630-45,631 (Aug. 29, 2001) (to be codified at 38 C.F.R. § 3.159(c)). In this regard, the November 2001 SSOC notified the veteran of the type of evidence necessary to substantiate the claim. It informed him that it would assist in obtaining identified records, but that it was the veteran's duty to give enough information to obtain the additional records and to make sure the records were received by VA. See *Quartuccio v. Principi*, No. 01-997 (U.S. Vet. App. June 19, 2002) (holding that both the statute, 38 U.S.C. § 5103(a), and the regulation, 38 C.F.R. § 3.159, clearly require the Secretary to notify a claimant which evidence, if any, will be obtained by the claimant and which evidence, if any, will be retrieved by the Secretary). Extensive VA medical records have been obtained, as well as information pertaining to the veteran's service during the Vietnam era.

Accordingly, the Board finds that VA has satisfied its duty to notify and assist and under the circumstances of this case, a remand would serve no useful purpose. See *Soyini v. Derwinski*, 1 Vet. App. 540, 546 (1991) (strict adherence to requirements in the law does not dictate an unquestioning, blind adherence in the face of overwhelming evidence in support of the result in a particular case; such adherence would result in unnecessarily imposing additional burdens on VA with no benefit flowing to the veteran); *Sabonis v. Brown*, 6 Vet. App. 426, 430 (1994) (remands which would only result in unnecessarily imposing additional burdens on VA with no benefit flowing to the veteran are to be avoided).

Service connection may be established for disability resulting from personal injury suffered or disease contracted in line of duty. 38 U.S.C.A. § 1110. Regulations provide that service connection

may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

If a veteran was exposed to a herbicide agent during active military, naval, or air service, the following diseases shall be service-connected, if the requirements of 38 C.F.R. § 3.307(a) are met, even if there is no record of such disease during service: chloracne or other acneform diseases consistent with chloracne, Hodgkin's disease, multiple myeloma, non-Hodgkin's lymphoma, acute and subacute peripheral neuropathy, porphyria cutanea tarda, prostate cancer, respiratory cancers, diabetes mellitus and soft-tissue sarcomas. 38 C.F.R. § 3.309(e).

The Secretary of the Department of Veterans Affairs has determined that a presumption of service connection based on exposure to herbicides used in the Republic of Vietnam during the Vietnam era is not warranted for any condition for which the Secretary has not specifically determined a presumption of service connection is warranted. Specifically, the Secretary has determined that a presumption for service connection is not warranted for urinary bladder cancer. See Notice, 67 Fed. Reg. 42600 (2002).

Prior to December 27, 2001, the law required that the veteran have a presumptive disease before exposure to herbicides was presumed. See 38 U.S.C.A. § 1116(a)(3) (West 1991 & Supp. 2001).

In December 2001, 38 U.S.C. § 1116 was amended and currently a veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. 38 U.S.C. § 1116(f), as added by § 201(c) of the "Veterans Education and Benefits Expansion Act of 2001," Public Law 107-103, 115 Stat. 976 (2001) (Dec. 27, 2001).

Notwithstanding the foregoing, the United States Court of Appeals for the Federal Circuit has determined that the Veterans' Dioxin and Radiation Exposure Compensation Standards (Radiation Compensation) Act, Pub. L. No. 98-542, § 5, 98 Stat. 2724, 2727-29 (1984), does not preclude a veteran from establishing service connection with proof of actual direct causation. *Combee v. Brown*, 34 F.3d 1039 (Fed.Cir. 1994).

VA regulations define that "service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam." 38 C.F.R. § 3.307 (a)(6)(iii) (2001). Additionally, under § 3.313, "Service in Vietnam" includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam. 38 C.F.R. § 3.313(a).

The veteran's separation papers, DD 214, reveal that the veteran had approximately one year and seven months of foreign and/or sea service. A statement dated in July 2001 from the Supervisor of the Records Support Branch of the Department of the Navy indicated that the veteran served aboard the USS Oriskany (CVA 34) from September 4, 1973, to July 4, 1974, and that this ship's

deck log showed that it was present from November 15 to 19, 1973 in the coastal waters off Vietnam, an area designated as "Yankee Station."

Since the record establishes that the veteran was on board the Oriskany in the waters offshore Vietnam during the relevant period, the Board concludes that the veteran must be presumed to have been exposed to an herbicide agent during his Vietnam era service. 38 C.F.R. § 3.307 (2001).

Hodgkin's Disease

There were no findings of Hodgkin's Disease in service or for many years thereafter. In early 1997, the veteran noticed enlarged cervical lymph nodes. A VA examination in September 1997 included a diagnosis of Hodgkin's disease.

The veteran was exposed to a herbicide agent during active service, and he currently has a diagnosis of Hodgkin's disease. There is no competent evidence attributing the onset of Hodgkin's Disease to any factor, which could rebut the chronic presumption. Under these circumstances, Hodgkin's disease is presumed to have been incurred during service. 38 U.S.C.A. §§ 1110, 1112, 1113 (West 1991 and Supp. 2001) 1116 (as added by § 201(b) of the "Veterans Education and Benefits Expansion Act of 2001," Public Law 107-103, 115 Stat. 976 (2001) (Dec. 27, 2001)); 38 C.F.R. §§ 3.303, 3.307, 3.309(e) (2001).

Bladder Cancer

The veteran's service medical records do not show any genitourinary abnormalities or any complaints of findings related to bladder cancer. Private medical records indicate that the veteran experienced hematuria beginning in January 1987. In February 1987, he underwent a transurethral resection of a large bladder tumor. This was determined to be a well-differentiated papillary transitional cell carcinoma. The veteran has experienced several recurrences of his bladder cancer, and has subsequently undergone chemotherapy and a transurethral resection of the prostate.

The medical evidence of record does not demonstrate a nexus between the veteran's presumed exposure to Agent Orange in service and his bladder cancer, diagnosed in 1987. The Board is aware that the veteran contends that his bladder cancer is a form of soft tissue sarcoma, which is one of the presumptive diseases under § 3.309(e), subject to the presumption of service connection based on exposure to herbicides. The veteran does not claim and the record does not show that he has expertise in the diagnosis or pathology of diseases. A statement dated in June 1997 from a VA Rating Board medical adviser indicated that the veteran's cancer was not one of those contemplated by that regulation. Moreover, studies by the National Academy of Sciences have determined that there is insufficient or inadequate evidence to associate bladder cancer with herbicide exposure, and the Secretary has specifically included urinary bladder cancer on the list of diseases for which a presumption of service connection based on Agent Orange exposure is not warranted.

The veteran's lay testimony alone is not competent evidence to support a finding on a medical question requiring special experience or special knowledge. *Espiritu v. Derwinski*, 2 Vet. App. 492 (1992).

In summary, no medical evidence has been presented of a nexus between the veteran's presumed exposure to Agent Orange in service and his bladder cancer, diagnosed in 1987. Accordingly, the

Board concludes that entitlement to service connection for bladder cancer, claimed as due to Agent Orange exposure, is not warranted. There is no equipoise between the positive and negative evidence, therefore no reasonable doubt issue is raised. 38 C.F.R. § 3.102 (2001).

ORDER

Service connection for Hodgkin's disease is granted.

Service connection for bladder cancer, claimed as a result of Agent Orange exposure, is denied.

THOMAS J. DANNAHER

Member, Board of Veterans' Appeals

SOURCE: <http://www.va.gov/vetapp02/files02/0208230.txt>

Sample Case #2

Opinions and Interpretations