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DEPARTMENT OF VETERANS AFFAIRS

**San Diego Regional Office
8810 Rio San Diego Drive
San Diego, CA 92108**

CHARLES G. BAUMBACH

**VA File Number
25 394 538**

**Represented by:
AGENT OR PVT ATTY-EXCLUSIVE CONTACT NOT REQUESTED**

**Decision Review Officer Decision
April 16, 2009**

INTRODUCTION

The records reflect that you are a veteran of the Vietnam Era and Peacetime. You served in the Air Force from February 16, 1962 to January 8, 1965. Since our last review of your claim, we received additional evidence on March 17, 2009. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

- 1 . Service connection for diabetes mellitus, type 2 is granted with an evaluation of 20 percent effective March 7, 2007.
- 2 . Service connection for peripheral neuropathy, left lower extremity is granted with an evaluation of 10 percent effective March 7, 2007.
- 3 . Service connection for peripheral neuropathy, right lower extremity is granted with an evaluation of 10 percent effective March 7, 2007.

EVIDENCE

- Letter from the veteran's counsel, received 03-17-09.
- Fact Sheet on Chlorinated Dibenzo-p-Dioxins, issued by the Agency for Toxic Substances and Disease Registry, dated 02-1999.
- Fact Sheet on Dioxins, issued by the National Institute of Environmental Health Sciences of the National Institutes of Health, dated 02-04-09.
- Executive Summary, veterans and Agent Orange: Herbicide/Dioxin Exposure and Type 2 Diabetes, issued by the National Academy of Sciences, dated 2000.

REASONS FOR DECISION

1. Service connection for diabetes mellitus, type 2.

Service connection for diabetes mellitus, type 2, is granted because the evidence shows a medical opinion that this current condition is related to in-service events or circumstances, with residuals evident as shown in treatment records. The Statement of the Case issued on 03-11-09 in this matter found that the veteran was exposed to Dioxin while stationed at Anderson Air Force Base. In that Statement of the Case, a medical opinion was discounted because of lack of supporting evidence that exposure to Dioxin, as distinct from exposure to Agent Orange herbicide, was at least as likely as not to have caused the veteran's diabetes. It is acknowledged that the veteran has type 2 diabetes. Since the issuance of the Statement of the Case, the veteran's counsel had pointed out a note to a VA regulation identified as a procedure manual that indicates that TCDD, the chemical (or group of chemicals) which is known as Dioxin, "is a herbicide commonly referred to as Agent Orange." The regulation in question applies specifically to service connection by presumption, which is not applicable in this case. Further, it is unclear the degree to which a Note in the regulatory text is binding. Thus, while not deciding whether the language is controlling, the cited language is informative and does indicate that the Dioxin, or TCDD, is commonly referred to as Agent Orange.

The cited articles and materials show that Dioxins are commonly known to cause a disruption in the endocrine system of animals, including humans, and further that exposure has been shown to cause an increased risk for diabetes. Specifically, the Congressionally sponsored National Academy of Sciences study of Veterans and Agent Orange showed "an association between exposure to the herbicides used in Vietnam or the contaminant dioxin and type 2 diabetes." The medical opinion of Dr. Edelman indicated that it is at least as likely as not that the exposure to Agent Orange (dioxin) is etiologically related to the veteran's current diabetes. The documentary evidence, together with the informative regulatory language cited by the veteran's counsel, is considered to support the medical opinion by Dr. Edelman, and further, the combination of all of this

evidence makes it clear that the veterans type 2 diabetes is causally related to his exposure to Dioxin while in service. Therefore, service connection for diabetes mellitus type 2, is considered warranted. The effective date is 03-07-07, the date of claim with continuous prosecution.

The evaluation of this condition is based on the medical evidence of record, including treatment records, showing that you take insulin to control the condition, and have been on insulin treatment since at least March 2007. Based on this evidence an evaluation of 20 percent disabling is considered warranted, effective 03-07-07. A higher evaluation of 40 percent disabling may be assigned for diabetes requiring insulin, restricted diet, and regulation of activities are required, which is not shown at this time. Regulation of activities means avoidance of strenuous occupational and recreational activities.

2. Service connection for peripheral neuropathy, left lower extremity, as secondary to the service-connected disability of diabetes mellitus, type 2.

Service connection for peripheral neuropathy, left lower extremity, has been established as related to the service-connected disability of diabetes mellitus, type 2, because the medical evidence of record including treatment records since March 2007 show this condition is related to your service connected diabetes. An evaluation of 10 percent is assigned from March 7, 2007, the date of claim with continuous prosecution. An evaluation of 10 percent is assigned for incomplete paralysis of foot movements which is mild, which is based on the treatment records showing painful peripheral neuropathy in the lower extremities, without any showing of motor impairment or atrophy, and is therefore considered only a sensory impairment. A higher evaluation of 20 percent is warranted unless evidence demonstrates incomplete paralysis of foot movements which is moderate, which is not shown at this time.

3. Service connection for peripheral neuropathy, right lower extremity as secondary to the service-connected disability of diabetes mellitus, type 2.

Service connection for peripheral neuropathy, right lower extremity, has been established as related to the service-connected disability of diabetes mellitus, type 2, because the medical evidence of record including treatment records since March 2007 show this condition is related to your service connected diabetes. An evaluation of 10 percent is assigned from March 7, 2007, the date of claim with continuous prosecution. An evaluation of 10 percent is assigned for incomplete paralysis of foot movements which is mild, which is based on the treatment records showing painful peripheral neuropathy in the lower extremities, without any showing of motor impairment or atrophy, and is therefore considered only a sensory impairment. A higher evaluation of 20 percent is warranted unless evidence demonstrates incomplete paralysis of foot movements which is moderate, which is not shown at this time.

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25 394 538

Page 4

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the 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 web site, www.va.gov.