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DATE: October 15, 2021

ORDER

Service connection for myelodysplastic syndrome is granted.

#### FINDING OF FACT

The Veteran's myelodysplastic syndrome is related to her service.

#### CONCLUSION OF LAW

The criteria are met for service connection for myelodysplastic syndrome. 38 U.S.C. §§ 1110, 5103, 5103A; 5107; 38 C.F.R. §§ 3.159, 3.303.

#### REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran served on active duty from December 1975 to November 1978.

This appeal is from a December 2019 rating decision that denied service connection for aplastic anemia. The Veteran filed a timely VA Form 10182, appealing to the Board and asking to be placed on the evidence docket. Under the evidence docket, the record is closed as of the date of the decision on appeal (here, December 13, 2019). The record is reopened for the submission of additional evidence for 90 days, on the date of receipt of the appeal (here, the window to submit evidence opened December 11, 2020, and closed March 11, 2021). Only evidence received during the appropriate times may be considered. Here, evidence and argument were received prior to the close of the window.

#### 1. Service connection for myelodysplastic syndrome is granted.

Service connection is granted for any current disability that is the result of a disease contracted or an injury sustained while on active duty service. 38 U.S.C. §§ 1110, 1131; 38 C.F.R. § 3.303(a). Service connection may also be granted for a disease diagnosed after discharge, where all the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

Service connection requires competent evidence showing: (1) the existence of a current disability; (2) in-service incurrence or aggravation of a disease or injury; and, (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service. *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004).

The Veteran was diagnosed with myelodysplastic syndrome at the November 2019 VA examination. Her oncologist from the 1990's noted in a March 2021 medical opinion that she had aplastic anemia. A September 1997 private medical record indicated that it appeared her myelodysplastic syndrome manifested as refractory anemia.

She asserts that it is related to her service in the Panama Canal Zone, specifically at Fort Clayton. She reports that she observed herbicides sprayed on a regular basis in and around the airfield where she worked and her barracks. She has submitted affidavits from fellow soldiers who served with her regarding the spraying of herbicides.

Exposure to certain types of herbicides (including 2,4-D, 2,4,5-T, TCDD, cacodylic acid, and picloram) is presumed among veterans that served in Vietnam, or with specific units that served in the Korean DMZ, or with specific personnel that worked on C-123 aircraft. 38 C.F.R. § 3.307(a)(6). The Veteran's service does not meet these criteria, which means exposure may not be presumed, but exposure may be established on a facts-found basis.

Here, the Board finds that she has provided sufficient evidence of exposure to resolve any doubt in her favor. She was in Panama, at Fort Clayton and Albrook Army Airfield, from June 1976 to November 1978. In support of her claim, she provided lists of United States exports that show that herbicidal agents, including the ingredients for Agent Orange (2,4-D and 2,4,5-T) were shipped to Panama, during the time period that she served in Panama. See 38 C.F.R. § 3.307(a)(6).

She also provided a copy of a November 2018 report from the GAO (United States Government Accountability Office) entitled Agent Orange, Actions Needed to Improve Accuracy and Communication of Information on Testing and Storage. The GAO report noted that commercial herbicides in the federal supply system were widely available worldwide for use in vegetation management at military installations, and that at least four of the known commercial herbicides contained 2,4-D or 2,4,5-T or both. It also noted that numerous commercial herbicides not in the federal supply system were being widely used elsewhere also contained 2,4,5-T, and thus its associated contaminant 2,3,7,8-TCDD. See id. In a footnote, the GAO report noted that the dioxin in commercial herbicides is the same as the dioxin in the tactical form of Agent Orange.

She provided affidavits attesting to herbicide use. B.J.T. reported that he hauled barrels of Agent Orange, which had an orange stripe around the barrel. He reported he sprayed around Fort Clayton, including weekly around the women's barracks, and that herbicides were sprayed from trucks along the roadsides and posts in the area. The Board notes the Veteran also provided a VA publication that noted Agent Orange was stored in 55-gallon drums with an orange identifying stripe.

B.S. reported she worked personnel at Albrook, where the Veteran worked. She indicated that all of the personnel would have to cover the flight line guard duty on a rotating basis, and that area was sprayed frequently to keep it secure from intruders and wildlife.

W.L. reported that he worked at Albrook and has become since service a military historian. He cited an Army Corps of Engineers report from 1980 that indicated that 2,4-D was used in areas around the Panama Canal Zone. He noted the Veteran worked in the flight control tower, which was built atop a shrouding structure that obscured generators and fans, without any foundation. He noted that anything in the ground or air, including frequently sprayed herbicides, would get pulled into the tower via the cooling fans and generators.

The Veteran reported that herbicides would get into the barracks because they were built with vents at the floor and ceiling, and fans, to circulate the air to keep it cool. She reported that they regularly sprayed the area near the barracks and the parade field, and near the jungle. She reported she had to lay on the ground at the gun range, which had no vegetation.

The Board finds the statements are probative, and show that chemicals were frequently sprayed and that vegetation was controlled.

Based on the documentation of herbicidal agents being shipped to Panama, and the GAO's report that commercial herbicides were used throughout military installations and contained herbicidal agents, including some used in Agent Orange, and the statements attesting to observing the spraying of chemicals on vegetation that later died, the Board finds that the Veteran has shown sufficient evidence of herbicidal agents being shipped to and used in Panama, and in resolving any remaining doubt in her favor, she was likely exposed.

There are certain diseases that are presumed to be related to such exposure, but myelodysplastic syndrome and aplastic anemia are not among the diseases listed. 38 C.F.R. § 3.309(e). Nevertheless, if exposure is shown, service connection may still be established with evidence of a direct relationship. *Combee v. Brown*, 34 F.3d 1039 (Fed. Cir. 1994).

The remaining inquiry, then, is whether her current diagnoses are related to her service, including her exposure to herbicides.

She was provided a VA examination, in November 2019. That examiner only considered whether her aplastic anemia was related to symptoms of an upper respiratory infection she had during her service, and found it less likely. He did not consider whether it was related to herbicide exposure.

She submitted a private medical opinion from her treating oncologist. In a March 2021 letter, he indicated first treating the Veteran in 1997, and asking her then if she had been exposed to any chemicals in her work. She was not at that time aware of the impact of herbicides, and did not report it until more recently. He reviewed the evidence she had located regarding herbicides in Panama, and opined that it was likely her aplastic anemia and myelodysplastic syndrome originated with her exposures to herbicides. He noted her reports that it came into her room and therefore got into her clothing, and that it was sprayed and pulled into her working area. He noted the export reports regarding shipments of herbicide to Panama, and cited medical studies relating Agent Orange to myelodysplastic syndrome. He noted that it was impossible to determine the definite cause of her disabilities, but that it was highly probable that it was due to extensive herbicide exposure.

Based on this evidence, the Board finds that service connection is warranted to aplastic anemia and myelodysplastic syndrome. The VA examiner did not address this exposure, but the Board finds the Veteran's doctor has provided sufficient explanation for his opinion that the Veteran's diagnoses are related to her service.

(Continued on the next page)

Accordingly, this claim is granted.

Jennifer White

Veterans Law Judge

Board of Veterans' Appeals

Attorney for the Board A. Gibson

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.