



**BOARD OF VETERANS' APPEALS**  
FOR THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON, DC 20038

Date: December 6, 2024

C XX XXX 649



The Board of Veterans' Appeals made a decision on your appeal.

<i>If your decision contains a</i>	<i>What happens next</i>
Grant	The Department of Veterans Affairs (VA) will contact you regarding next steps, which may include issuing payment. Please refer to VA Form 4597, which is attached for additional options.
Remand	Additional development is needed. VA will contact you regarding next steps.
Denial or Dismissal	Please refer to VA Form 4597, which is attached for your options.

If you have any questions, please contact your representative, if you have one, or check the status of your appeal at <http://www.vets.gov>.

Sincerely yours,

**Outbound Operations**  
Office of the Clerk of the Board  
Board of Veterans' Appeals

Enclosures (1)  
CC: The American Legion

The American Legion  
c/o Bergmann & Moore, LLC  
25 W. Middle Lane  
Rockville, MD 20850-2214



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# BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF  
Represented by  
  
The American Legion

C XX XXX 649  
Docket No. 240729-460226  
**Advanced on the Docket**

DATE: December 6, 2024

## ORDER

Entitlement to service connection for diabetes mellitus, type II, is granted.

Entitlement to service connection for essential hypertension is granted. **This issue is granted pursuant to the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act).**

Entitlement to service connection for atherosclerosis of the coronary artery with stable angina pectoris and hypertensive heart disease with congestive heart failure, is granted.

Entitlement to service connection for hypothyroidism is granted.

Entitlement to service connection for hyperlipidemia is denied.

Entitlement to service connection for irritable bowel syndrome is denied.

Entitlement to service connection for gastroesophageal reflux disease (GERD) is denied.

**REMANDED**

Entitlement to service connection for gout on feet, ankles, arms and shoulders, is remanded.

Entitlement to service connection for chronic kidney disease, is remanded.

Entitlement to service connection for liver condition, is remanded.

Entitlement to service connection for primary anemia also claimed as vitamin D, and magnesium deficiency, is remanded.

**FINDINGS OF FACT**

1. The Veteran served in Panama in 1968 and 1969 and the AOJ has acknowledged herbicide exposure as a result of that service.
2. The Veteran has a current diagnosis of diabetes mellitus, type II; atherosclerosis of the coronary artery with stable angina pectoris; hypertension and hypertensive heart disease with congestive heart failure; and hypothyroidism.
3. The Veteran's hyperlipidemia does not constitute a disability for VA benefits purposes.
4. The Veteran's irritable bowel syndrome and GERD are not etiologically related to an in-service injury, event or disease.

**CONCLUSIONS OF LAW**

1. The criteria for entitlement to service connection for diabetes mellitus, type II, as due to exposure to herbicides, have been met. 38 U.S.C. §§ 1110, 1112, 1113, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.

2. The criteria for entitlement to service connection for atherosclerosis of coronary artery with stable angina pectoris as due to exposure to herbicide agents, have been met. 38 U.S.C. §§ 1110, 1112, 1113, 1131, 1137, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.
3. The criteria for entitlement to service connection for hypertension under the PACT Act as due to exposure to herbicide agents and related hypertensive heart disease with congestive heart failure have been met. 38 U.S.C. §§ 1110, 1112, 1113, 1131, 1137, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.
4. The criteria for entitlement to service connection for hypothyroidism as due to exposure to herbicide agents, have been met. 38 U.S.C. §§ 1110, 1112, 1113, 1131, 1137, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.
5. The criteria for entitlement to service connection for hyperlipidemia have not been met. 38 U.S.C. §§ 1110, 5107; 38 C.F.R. §§ 3.102, 3.30.
6. The criteria for entitlement to service connection for irritable bowel syndrome and GERD, have not been met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303.

### **REASONS AND BASES FOR FINDINGS AND CONCLUSIONS**

The Veteran served on active duty from January 1968 to December 1969. The Board thanks the Veteran for his service to our country.

The rating decision on appeal was issued in August 2023 and constitutes an initial decision; therefore, the modernized review system, also known as the Appeals Modernization Act (AMA), applies.

In the July 29, 2024, VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the Veteran elected the Evidence Submission docket.

Therefore, the Board may only consider the evidence of record at the time of the August 2023 agency of original jurisdiction (AOJ) decision on appeal, as well as any evidence submitted by the Veteran or representative with, or within 90 days from receipt of, the VA Form 10182. 38 C.F.R. § 20.303. If evidence was submitted either (1) during the period after the AOJ issued the decision on appeal and prior to the date the Board received the VA Form 10182, or (2) more than 90 days following the date the Board received the VA Form 10182, the Board did not consider it in its decision. 38 C.F.R. §§ 20.300, 20.303, 20.801.

In determining the scope of a claimant's intent in filing a claim, VA must consider the description of the claim, the symptoms noted, and the information the claimant submits or that the Secretary obtains in support of the claim. *King v. Shinseki*, 23 Vet. App. 464, 470 (2010) (citing *Clemons v. Shinseki*, 23 Vet. App. 1, 5 (2009)).

A claim must be liberally construed with respect to the scope of the conditions for which the veteran intends to seek service connection, in part because a veteran typically is not qualified to diagnose his symptoms. *Clemons*, 23 Vet. App. at 6. Thus, even if a claimant attempts to identify his diagnosis in his claim for benefits, his claim is not limited necessarily to benefits for that diagnosis. *Delisio v. Shinseki*, 25 Vet. App. 45, 53 (2011). The Court clarified in *Brokowski v. Shinseki*, that a Veteran sufficiently files a claim for benefits "by referring to a body part or system that is disabled or by describing symptoms of the disability." *Supra*, at 86.

Thus, upon the filing of a claim for benefits, the Secretary generally must investigate the reasonably apparent and potential causes of the veteran's condition and theories of service connection that are reasonably raised by the record or raised by a sympathetic reading of the claimant's filing. *See Schroeder v. West*, 212 F.3d 1265, 1271 (Fed. Cir. 2000). Overall, the scope of the claim will be based on a sympathetic assessment of "the claimant's description of the claim; the symptoms the claimant describes; and the information the claimant submits or that the Secretary obtains in support of the claim," i.e., the information gathered upon investigation. *See DeLisio v. Shinseki*, 25 Vet. App. 45, 55 (2011) (citing *Clemons*, 23 Vet. App. at 5.).

Thus, based on the above noted procedural history, the relevant regulations and caselaw, and the reasons explained in more detail below, the Board finds that the Veteran's March 2023 claim of service connection for “congestive heart failure” as due to exposure to an herbicide agent encompasses the diagnoses of hypertension, hypertensive heart disease with congestive heart failure, and atherosclerosis of coronary artery with stable angina pectoris. See Private Medical Records received July 29, 2024, within evidence window.

If the Veteran would like VA to consider any evidence that was submitted that the Board could not consider for the denied claims for service connection for irritable bowel syndrome, GERD, or hyperlipidemia, the Veteran may file a Supplemental Claim (VA Form 20-0995) and submit or identify this evidence. 38 C.F.R. § 3.2501. If the evidence is new and relevant, VA will issue another decision on the claim[s], considering the new evidence in addition to the evidence previously considered. *Id.* Specific instructions for filing a Supplemental Claim are included with this decision.

However, because the Board is remanding the claims for service connection for gout, kidney, liver and anemia, any evidence the Board could not consider will be considered by the AOJ in the adjudication of those claims. 38 C.F.R. § 3.103(c)(2)(ii).

### **Service Connection**

In general, service connection may be granted for disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. § 3.303. The three-element test for service connection requires evidence of: (1) a current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the current disability and the in-service disease or injury. *Shedden v. Principi*, 381 F.3d 1163, 1166 -67 (Fed. Cir. 2004).

Service connection may also be established on a secondary basis for a disability that is proximately due to or the result of a service-connected disease or injury. 38 C.F.R. § 3.310(a). Establishing service connection on a secondary basis requires



evidence sufficient to show (1) that a current disability exists and (2) that the current disability was either (a) caused by or (b) aggravated by a service-connected disability. 38 C.F.R. § 3.310(a); *Allen v. Brown*, 7 Vet. App. 439 (1995) (en banc), reconciling, *Leopoldo v. Brown*, 4 Vet. App. 216 (1993), and *Tobin v. Derwinski*, 2 Vet. App. 34 (1991).

Service connection may also be awarded on a presumptive basis for certain chronic diseases, to include congestive heart failure, listed in 38 C.F.R. § 3.309 (a), that manifest to a degree of 10 percent within one year of service separation. 38 C.F.R. §§ 3.303 (b), 3.307. Service connection may be awarded on the basis of continuity of symptomatology for those conditions listed in 38 C.F.R. § 3.309 (a) if a claimant demonstrates (1) that a condition was noted during service; (2) evidence of post-service continuity of the same symptomatology; and (3) medical or, in certain circumstances, lay evidence of a nexus between the present disability and the post-service symptomatology. *See Barr v. Nicholson*, 21 Vet. App. 303, 307 (2007); 38 C.F.R. § 3.303 (b). Subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes.

If a veteran was exposed to an herbicide agent during active service, certain diseases, including diabetes mellitus, type II; hypothyroidism, hypertension, and ischemic heart disease, will be service connected. These diseases need only manifest to a degree of at least 10 percent at any time after service. 38 C.F.R. § 3.307 (a)(6)(ii).

Where a veteran submits a service connection claim with evidence of a disability and evidence of participation in a Toxic Exposure Risk Activity (TERA) during active military service and such evidence is not sufficient to establish service connection for the disability, the Secretary shall provide the veteran with a medical examination and secure a nexus opinion unless VA determines that there is no assertion that the claimed disorder is related to the toxic exposure risk activity. *See* 38 U.S.C. § 1116; Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act), Pub. L. 117-168, § 303 (to be codified at 38 U.S.C. § 1168).

Notwithstanding the foregoing, regulations also provide that service connection may be granted for any disease diagnosed after discharge, when all evidence, including that pertinent to service, establishes that the disability was incurred in service. 38 C.F.R. § 3.303(d); *see also Combee v. Brown*, 34 F.3d 1039 (Fed. Cir. 1994). In other words, a presumption of service connection provided by law is not the sole method for showing causation in establishing a claim for service connection for disability due to herbicide exposure. *See Stefl v. Nicholson*, 21 Vet. App. 120 (2007).

When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant. 38 U.S.C. § 5107; 38 C.F.R. § 3.102; *see also Gilbert v. Derwinski*, 1 Vet. App. 49, 53 (1990). The benefit of the doubt applies when the evidence for and against is in “approximate balance” or “nearly equal,” but does not apply when the evidence persuasively favors one side or the other. *Lynch v. McDonough*, 21 F.4<sup>th</sup> 776 (Fed. Cir. 2021) (en banc).

The Veteran contends that he has the claimed disabilities due to exposure to herbicide sprayed around the bases of Ft. Davis and Ft. Sherman and in the jungle during his service time in the Panama Canal Zone. *See* March 2023 VA Form 21-526EZ and July 2024 VA Form 10182. His service personnel records reflect that he served in the Panama Canal Zone from June 1968 to December 1969. He has submitted a number of documents and articles in support of his allegation that herbicides were used in the Panama Canal Zone. However, another chart provided by the Veteran indicated thousands of pounds of herbicides 2,4 D and 2,4,5-T were shipped to Panama in 1968 and 1969 as recorded in Department of Commerce records. In addition, a 2021 article from the Open Journal of Soil Science entitled “Long-Term Environmental Impacts of Pesticide and Herbicide Use in Panama Canal Zone” concluded that after 1932 herbicides were used in Panama including 2,4-D and, as “U.S. military bases [in] Panama . . . also had challenges in controlling tropical flora and fauna, commercially available herbicides and insecticides were obtained through the Federal Catalog to control weeds and insects.”

There is also evidence that does not support the claim. A December 2012 Final Report on an Investigation into the Allegations of Agent Orange in the Canal Zone and Panama submitted by the Veteran could not verify that Agent Orange had been shipped to, sprayed on, or buried in the Canal Zone or Panama after an extensive search of historical records. In addition, there is evidence that neither supports nor opposes the Veteran's position. A June 2023 Records Research Response noted the Veteran's assertions and concluded that no evidence was located to support documentation of the claimed exposure event.

However, an April 2023 VA Toxic Exposure Risk Activity Memorandum concludes that the Veteran participated in a TERA during active military service. Specifically, the Veteran was exposed to Herbicide Agent - 2,3,7,8 - Tetrachlorodibenzodioxin (TCDD), as OMPF shows Ft. Davis (Panama) in February 1968. To the extent this is a favorable finding by the AOJ, the Board cannot disturb it absent clear and unmistakable evidence. As the record contains evidence herbicides were used in Panama during the time the Veteran was there, the Board will not disturb this finding. To the extent the TERA memo is not considered a favorable finding, affording the Veteran the benefit of any doubt, the Board finds that the Veteran was exposed to herbicides in Panama during active duty. *Lynch, supra*.

The Veteran through his representative also contends that he has hyperlipidemia to include as secondary to or aggravated by hypothyroidism. *See* November 2023 written brief presentation.

The August 2023 decision on appeal makes favorable findings that the Veteran has diagnoses of congestive heart failure and irritable bowel syndrome. The Board is bound by these favorable findings. 38 C.F.R. § 3.104 (c).

The November 2023 written brief presentation contains hyperlinks to six documents that are not otherwise part of the record on appeal. The hyperlinked content was not accessed nor considered by the Board as part of the record. *See Bowey v. West*, 11 Vet. App. 106, 108-09 (1998) (holding that the mere reference to non-VA documents is insufficient to incorporate them into the record).

**1. Entitlement to service connection for diabetes mellitus.**

As noted, the Veteran was exposed to herbicides during active duty service. He has diabetes mellitus, type II, which is an enumerated condition under 38 C.F.R. § 3.309(e). VA CAPRI treatment records dated in November 2022 show that he is prescribed insulin for diabetes, showing that his diabetes mellitus, type II, manifested to a compensable degree within the applicable presumptive period. *See* 38 C.F.R. § 4.119, DC 7913. Accordingly, it is presumed that the Veteran's diabetes mellitus, type II, is related to his herbicide exposure. 38 U.S.C. § 1116 (a); 38 C.F.R. §§ 3.307 (a)(6), 3.309(e). Thus, service connection for diabetes mellitus, type 2, is warranted as secondary to herbicide exposure on a presumptive basis.

**2. Entitlement to service connection for atherosclerosis of coronary artery with stable angina pectoris.**

As noted, the Veteran was exposed to herbicides during active duty service and has a diagnosis of atherosclerosis of coronary artery with stable angina pectoris. Ischemic heart disease is an enumerated condition under 38 C.F.R. § 3.309(e) and the regulatory definition includes atherosclerotic cardiovascular disease which includes coronary artery disease and stable angina. Private medical treatment records show that he has been prescribed continuous medication for heart problems for a number of years, showing that his atherosclerosis manifested to a compensable degree within the applicable presumptive period. *See* 38 C.F.R. § 4.119, DC 7005. Accordingly, it is presumed that the Veteran's atherosclerosis of coronary artery with stable angina pectoris, is related to his herbicide exposure. 38 U.S.C. § 1116 (a); 38 C.F.R. §§ 3.307 (a)(6), 3.309(e). Thus, service connection for atherosclerosis of coronary artery with stable angina pectoris, is warranted as secondary to herbicide exposure on a presumptive basis.

**3. Entitlement to service connection for essential hypertension and hypertensive heart disease with congestive heart failure.**

As noted, the Veteran was exposed to herbicides during active duty service. He also has been diagnosed with essential hypertension and hypertensive heart disease with congestive heart failure. Congress revised 38 U.S.C. § 1116(a)(2) effective

August 10, 2022, to include hypertension as an additional disease due to herbicide agent exposure. See PACT Act, Sec. 404. Hence, presumptive service connection for hypertension as related to exposure to herbicide agents during service is available to the Veteran under the PACT Act. Thus, the Board grants the Veteran's claim for service connection for hypertension on a presumptive basis under the PACT Act. Private treatment records show that he is prescribed medication for essential hypertension and hypertensive heart disability, showing that his heart disability manifested to a compensable degree within the applicable presumptive period. See 38 C.F.R. § 4.119, DC 7007. Accordingly, it is presumed that the Veteran's hypertension and hypertensive heart disease, was related to herbicide exposure. 38 U.S.C. § 1116 (a); 38 C.F.R. §§ 3.307(a)(6), 3.309(e). Thus, service connection for hypertension and hypertensive heart disease is warranted as secondary to herbicide exposure on a presumptive basis.

#### **4. Entitlement to service connection for hypothyroidism**

As noted, the Veteran was exposed to herbicides during active duty service. He also has been diagnosed with hypothyroidism. Private treatment records show that he is prescribed medication for hypothyroidism. See 38 C.F.R. § 4.119, DC 7903. 38 U.S.C. § 1116 (a); 38 C.F.R. §§ 3.307(a)(6), 3.309(e). Thus, service connection for hypothyroidism is warranted as secondary to herbicide exposure on a presumptive basis.

#### **5. Entitlement to service connection for irritable bowel syndrome and GERD, claimed as due to exposure to herbicides.**

The Board concludes that the evidence of record persuasively weighs against finding that the Veteran's irritable bowel syndrome and GERD began during service, or are otherwise related to an in-service injury, event, or disease, to include exposure to herbicide. See 38 C.F.R. §§ 3.303.

The Veteran's service treatment records include no pertinent complaints, findings, symptoms or diagnoses. His December 1969 report of separation medical examination shows that all relevant clinical evaluations were normal. His

December 1969 separation report of medical history shows that he denied all relevant complaints and summarizes that he had an unremarkable medical history.

The record contains no competent medical evidence linking the Veteran's irritable bowel syndrome or GERD to his active duty service, to include exposure to herbicide.

The Board acknowledges the Veteran's assertion that his current irritable bowel syndrome is due to active duty service and that GERD is due to now service-connected hypothyroidism. He is competent to report his observable symptoms. However, as a layperson he is not competent to determine the etiology of his current disabilities. The issue of etiology is medically complex, as it requires specialized medical education and expertise to determine. *See Jandreau v. Nicholson*, 492 F.3d 1372, 1377, 1377 n.4 (Fed. Cir. 2007). Consequently, the Board cannot assign any probative weight to the Veteran's assertion.

The Board acknowledges that VA did not provide the Veteran an examination or seek a medical opinion concerning his irritable bowel syndrome or GERD prior to the decision on appeal but finds no pre-decisional duty to assist error in this regard. At the time of the decision on appeal, there was no indication that the claimed disabilities may be associated with an established event, injury, or disease in service or a service-connected disability. The Veteran's service treatment records contain no complaints, findings, symptoms or diagnoses pertaining to the GERD or irritable bowel syndrome. Under the AMA, the duty to assist does not attach at the Board review level, and therefore, no further development may be ordered by the Board at this time. 38 U.S.C. § 5103A (d); 38 C.F.R. § 3.159 (c)(4)(i); *McLendon v. Nicholson*, 20 Vet. App. 79, 81-82 (2006).

The Board recognizes that in this case, a TERA consisting of exposure to herbicide is presumed. However, irritable bowel syndrome and GERD is not a covered diseases for which presumptive service connection is warranted due to herbicide exposure. Although VA has an obligation to obtain a medical opinion for any service connection claim which cannot be granted where there is evidence of a TERA and of a disability, VA has identified several exceptions to this general obligation where there is no indication of an association between the disability and

the TERA. *See* 38 U.S.C. § 1168(b). Specifically, in pertinent part a TERA opinion is not required for disabilities that have not been shown to have any positive association with herbicide exposure. *See* VBA Letter 20-22-10 at 10-13, Processing Claims Involving the PACT Act, 87 Fed. Reg. 78,543 (Dec. 22, 2022). The Veteran's claimed irritable bowel syndrome and GERD are gastrointestinal or digestive disorders which are included on the list of disorders that have not been shown to have any positive association with herbicide exposure. Thus, because an exception to the TERA opinion requirements applies, VA examinations and TERA opinions based on herbicide agent exposure under the PACT Act were not warranted, and no pre-decisional duty-to-assist errors occurred. *See* 38 U.S.C. §§ 1168 (b), 5103A; 38 C.F.R. § 20.802.

In light of the above, service connection for irritable bowel syndrome and GERD is not warranted and is denied.

As there is not an approximate balance of positive and negative evidence, the benefit-of-the-doubt doctrine is not applicable and service connection is not warranted. *See* 38 U.S.C. § 5107 (b); 38 C.F.R. § 3.102.

**6. Entitlement to service connection for hyperlipidemia, claimed as due to exposure to herbicides or as secondary to hypothyroidism.**

The Board finds that service connection is not warranted for hyperlipidemia. An August 2021 VA CAPRI record provides an assessment of hyperlipidemia. However, hyperlipidemia does not constitute a disability in its own right but is akin to a laboratory finding. *Cf.* 61 Fed. Reg. 20440, 20,445 (May 7, 1996) (supplementary information preceding Final Rule amending the criteria for evaluating endocrine system disabilities indicates that diagnoses of hyperlipidemia, elevated triglycerides, and elevated cholesterol are actually laboratory test results, and are not, in and of themselves, disabilities). In this regard, the evidence does not show that the Veteran's hyperlipidemia is manifested by symptoms, causes functional impairment, or impairs earning capacity. *See Saunders v. Wilkie*, 886 F.3d 1356, 1367-68 (Fed. Cir. 2018) (holding that the term "disability" for VA compensation purposes refers to functional impairment of earning capacity).

In the absence of a current disability, the criteria for establishing service connection for hyperlipidemia are not satisfied. *See Holton v. Shinseki*, 557 F.3d 1363, 1366 (Fed. Cir. 2009).

In light of the above, service connection for hyperlipidemia is not warranted and is denied.

As there is not an approximate balance of positive and negative evidence, the benefit-of-the-doubt doctrine is not applicable and service connection is not warranted. *See* 38 U.S.C. § 5107 (b); 38 C.F.R. § 3.102.

### **REASONS FOR REMAND**

- 1. Entitlement to service connection for gout on feet, ankles, arms and shoulders, claimed as due to exposure to herbicides or as secondary to diabetes mellitus, type II, is remanded.**
- 2. Entitlement to service connection for kidney disability, claimed as due to exposure to herbicides or as secondary to diabetes mellitus, type II, is remanded.**
- 3. Entitlement to service connection for liver condition, claimed as due to exposure to herbicides or as secondary to diabetes mellitus, type II, is remanded.**
- 4. Entitlement to service connection for primary anemia also claimed as vitamin D, and magnesium deficiency, claimed as due to exposure to herbicides or as secondary to hypothyroidism, is remanded.**

As noted above, where a veteran submits a service connection claim with evidence of a disability and evidence of participation in a TERA during active military service and such evidence is not sufficient to establish service connection for the disability, the Secretary shall provide the veteran with a medical examination and secure a nexus opinion unless VA determines that there is no assertion that the



claimed disorder is related to the toxic exposure risk activity. *See* 38 U.S.C. § 1116; PACT Act.

In this regard, prior to the rating decision on appeal, the AOJ issued a TERA memorandum finding the Veteran was exposed to herbicides in service.

The August 2023 decision on appeal makes favorable findings that the Veteran has diagnoses of gout, a liver condition, and primary anemia also claimed as vitamin D, and magnesium deficiency. The Board is bound by these favorable findings. 38 C.F.R. § 3.104 (c). In addition, VA CAPRI records dated in August 2021 provide an assessment of stage III chronic kidney disease.

However, the evidence is not sufficient to establish service connection for the Veteran's disabilities. As prior to the rating decision on appeal the AOJ issued a TERA memorandum finding the Veteran was exposed to herbicides, it was predecisional error not to obtain a TERA examination and a medical opinion addressing the Veteran's total potential exposure through all applicable military deployments and the synergistic, combined effect of all toxic exposure risk activities is necessary as to each claim. 38 U.S.C. § 1168(a).

The Board observes that it is not making any credibility determination at this time with respect to the claims being remanded.

The matters are REMANDED for the following action:

1. Please schedule the Veteran for an examination with an appropriate clinician pursuant to Section 303 of the PACT Act with respect to the claims for service connection for (i) gout on feet, ankles, arms and shoulders; (ii) chronic kidney disease; (iii) liver condition; and (iv) primary anemia also claimed as vitamin D, and magnesium deficiency. The clinician should be advised of all toxic exposure risk activities that the Veteran is known to have engaged in during his active

military service, including exposure to herbicide in the Panama Canal Zone.

The clinician should provide an opinion as to whether it is at least as likely as not (i.e., likelihood is at least approximately balanced or nearly equal, if not higher) that the Veteran's (a) gout on feet, ankles, arms and shoulders, (b) kidney disability, (c) liver condition, and (d) primary anemia also claimed as vitamin D, and magnesium deficiency are related to his toxic exposure risk activities during his active military service, including exposure to herbicide in the Panama Canal Zone. In rendering this opinion, the clinician is asked to consider and discuss the Veteran's total potential exposure through all applicable military deployments and the synergistic, combined effect of all toxic exposure risk activities.

The clinician should provide a detailed explanation for all answers provided. If an opinion cannot be provided without resorting to speculation, the clinician should explain the inability to provide an opinion, identifying precisely what facts could not be determined. In particular, he/she should comment on whether an opinion could not be provided because the limits of medical knowledge have been exhausted or whether additional

testing or information could be obtained that would lead to a conclusive opinion.



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M. C. GRAHAM  
Veterans Law Judge  
Board of Veterans' Appeals

Attorney for the Board

J. Davitian, 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.*



**DEPARTMENT OF VETERANS AFFAIRS  
Veterans Benefits Administration  
VA Regional Office**

**VA File Number  
26 939 649**

**Represented By:  
AMERICAN LEGION  
Decision Review Officer Decision  
12/13/2024**

**INTRODUCTION**

You are a Veteran of the Vietnam Era. You served in the Army from January 17, 1968 to December 19, 1969. The Board of Veterans' Appeals [BVA] made their decision on your appeal on December 6, 2024. We have implemented their decision based on the evidence listed below.

**DECISION**

1. Service connection for diabetes mellitus associated with herbicide exposure is granted with a 20 percent evaluation effective March 3, 2023.
2. Service connection for congestive heart failure associated with herbicide exposure is granted with a 10 percent evaluation effective March 3, 2023.
3. Service connection for Hypothyroidism associated with herbicide exposure is granted with a 10 percent evaluation effective March 3, 2023.
4. Service connection for hypertension is granted with an evaluation of 10 percent effective August 10, 2022.



## **EVIDENCE**

- Board of Veterans' Appeals (BVA) Decision, dated December 06, 2024
- Records Research Center Response, received on June 09, 2023
- CAPRI, VA Medical Center, Biloxi, MS, for the period September 30, 2019 to April 6, 2023
- Medical Treatment Record - Non-Government Facility, received on April 26, 2023
- Medical Treatment Record - Non-Government Facility, received on April 19, 2023
- C&P Exam, received on April 18, 2023
- VA Memo, received on April 07, 2023
- Identification Materials, received on April 07, 2023
- STR - Medical, received on July 29, 2019, for the period of service of January 1968 to December 1969

## **REASONS FOR DECISION**

### **1. Service connection for diabetes mellitus associated with herbicide exposure.**

In accordance with decision of Board of Veterans' Appeals [BVA] service connection for diabetes mellitus has been granted on the basis of presumption due to herbicide exposure. (38 USC 1116, 38 CFR 3.303, 38 CFR 3.307, 38 CFR 3.309, 38 CFR 3.816)

An evaluation of 20 percent is assigned from March 3, 2023, date of claim because you have continuously prosecuted claim and appeal. [38 CFR 3.400]

An evaluation of 20 percent is assigned if there is a requirement for insulin and restricted diet, or oral hypoglycemic agent and restricted diet. A higher evaluation of 40 percent is not warranted unless insulin, restricted diet, and regulation of activities are required. (38 CFR 4.119)

Laws and regulations applicable to this issue:

- 38 U.S.C. 1110 & 1131 Basic entitlement.
- 38 U.S.C. 5107 Claimant responsibility; benefit of the doubt.
- 38 C.F.R. §3.1 Definitions.
- 38 C.F.R. §3.6 Duty periods.
- 38 C.F.R. §3.102 Reasonable doubt.
- 38 C.F.R. §3.103 Procedural due process and appellate rights.
- 38 C.F.R. §3.104 Finality of decisions.
- 38 C.F.R. §3.156 New and material evidence.
- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §3.303 Principles relating to service connection.
- 38 C.F.R. §3.304 Direct service connection; wartime and peacetime.
- 38 C.F.R. §3.307 Presumptive service connection for chronic, tropical, or prisoner-of-war related disease, disease associated with exposure to certain herbicide agents, or disease associated with exposure to contaminants in the water supply at Camp Lejeune; wartime and service on or after January 1, 1947.



38 C.F.R. §3.309 Disease subject to presumptive service connection.  
38 C.F.R. §3.2500 Review of decisions  
38 C.F.R. §3.2502 Return by higher-level adjudicator or remand by the Board of Veterans' Appeals.  
38 C.F.R. §3.2601 Higher-level review  
38 C.F.R. §4.119 Schedule of ratings - endocrine system. [DC 7913]

## **2. Service connection for congestive heart failure associated with herbicide exposure.**

In accordance with decision of Board of Veterans' Appeals [BVA] service connection for congestive heart failure has been granted on the basis of presumption due to herbicide exposure. (38 USC 1116, 38 CFR 3.303, 38 CFR 3.307, 38 CFR 3.309, 38 CFR 3.816)

An evaluation of 10 percent is assigned from March 3, 2023, date of claim because you have continuously prosecuted claim and appeal. [38 CFR 3.400]

A 10 percent evaluation is assigned for evidence of a workload of 7.1-10.0 METs results in heart failure symptoms; or continuous medication required for control.

A higher evaluation of 30 percent is not warranted unless there is evidence of a workload of 5.1-7.0 METs results in heart failure symptoms; or evidence of cardiac hypertrophy or dilatation confirmed by echocardiogram or equivalent. (38 CFR 4.104)

We are requesting an examination to determine your current level of disability. (38 CFR 3.326, 38 CFR 3.327)

Laws and regulations applicable to this issue:

38 U.S.C. 1110 & 1131 Basic entitlement.  
38 U.S.C. 5107 Claimant responsibility; benefit of the doubt.  
38 C.F.R. §3.1 Definitions.  
38 C.F.R. §3.6 Duty periods.  
38 C.F.R. §3.102 Reasonable doubt.  
38 C.F.R. §3.103 Procedural due process and appellate rights.  
38 C.F.R. §3.104 Finality of decisions.  
38 C.F.R. §3.156 New and material evidence.  
38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.  
38 C.F.R. §3.303 Principles relating to service connection.  
38 C.F.R. §3.304 Direct service connection; wartime and peacetime.  
38 C.F.R. §3.307 Presumptive service connection for chronic, tropical, or prisoner-of-war related disease, disease associated with exposure to certain herbicide agents, or disease associated with exposure to contaminants in the water supply at Camp Lejeune; wartime and service on or after January 1, 1947.  
38 C.F.R. §3.309 Disease subject to presumptive service connection.  
38 C.F.R. §3.2500 Review of decisions



38 C.F.R. §3.2502 Return by higher-level adjudicator or remand by the Board of Veterans' Appeals.

38 C.F.R. §3.2601 Higher-level review

38 C.F.R. §4.104 Schedule of ratings - cardiovascular system. [DC 7005]

### **3. Service connection for Hypothyroidism associated with herbicide exposure.**

In accordance with decision of Board of Veterans' Appeals [BVA] service connection for Hypothyroidism has been granted on the basis of presumption due to herbicide exposure. (38 USC 1116, 38 CFR 3.303, 38 CFR 3.307, 38 CFR 3.309, 38 CFR 3.816)

A 10 percent evaluation is assigned from March 3, 2023, date of claim because you have continuously prosecuted claim and appeal. [38 CFR 3.400] This is the minimal evaluation because evidence shows treatment with medication.

We are requesting an examination to determine your current level of disability. (38 CFR 3.326, 38 CFR 3.327)

Laws and regulations applicable to this issue:

38 U.S.C. 1110 & 1131 Basic entitlement.

38 U.S.C. 5107 Claimant responsibility; benefit of the doubt.

38 C.F.R. §3.1 Definitions.

38 C.F.R. §3.6 Duty periods.

38 C.F.R. §3.102 Reasonable doubt.

38 C.F.R. §3.103 Procedural due process and appellate rights.

38 C.F.R. §3.104 Finality of decisions.

38 C.F.R. §3.156 New and material evidence.

38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.

38 C.F.R. §3.303 Principles relating to service connection.

38 C.F.R. §3.304 Direct service connection; wartime and peacetime.

38 C.F.R. §3.307 Presumptive service connection for chronic, tropical, or prisoner-of-war related disease, disease associated with exposure to certain herbicide agents, or disease associated with exposure to contaminants in the water supply at Camp Lejeune; wartime and service on or after January 1, 1947.

38 C.F.R. §3.309 Disease subject to presumptive service connection.

38 C.F.R. §3.2500 Review of decisions

38 C.F.R. §3.2502 Return by higher-level adjudicator or remand by the Board of Veterans' Appeals.

38 C.F.R. §3.2601 Higher-level review

38 C.F.R. §4.119 Schedule of ratings - endocrine system. [DC 7903]

### **4. Service connection for hypertension.**

In accordance with decision of Board of Veterans' Appeals [BVA] service connection for



hypertension has been granted on the basis of presumption under the PACT Act. (38 CFR 3.307, 38 CFR 3.309)

An evaluation of 10 percent is assigned from August 10, 2022, date of law change. [38 CFR 3.114 & 3.400]

A 10 percent evaluation is assigned for hypertensive vascular disease (hypertension and isolated systolic hypertension) based on: diastolic pressure predominantly 100 or more; or systolic pressure predominantly 160 or more; or minimum evaluation for an individual with a history of diastolic pressure predominantly 100 or more who requires continuous medication for control.

A higher evaluation of 20 percent is not warranted for hypertensive vascular disease (hypertension and isolated systolic hypertension) unless there is diastolic pressure predominantly 110 or more; or systolic pressure predominantly 200 or more. (38 CFR 4.104)

Laws and regulations applicable to this issue:

38 U.S.C. 1110 & 1131 Basic entitlement.  
38 U.S.C. 5107 Claimant responsibility; benefit of the doubt.  
38 C.F.R. §3.1 Definitions.  
38 C.F.R. §3.6 Duty periods.  
38 C.F.R. §3.102 Reasonable doubt.  
38 C.F.R. §3.103 Procedural due process and appellate rights.  
38 C.F.R. §3.104 Finality of decisions.  
38 C.F.R. §3.156 New and material evidence.  
38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.  
38 C.F.R. §3.303 Principles relating to service connection.  
38 C.F.R. §3.304 Direct service connection; wartime and peacetime.  
38 C.F.R. §3.307 Presumptive service connection for chronic, tropical, or prisoner-of-war related disease, disease associated with exposure to certain herbicide agents, or disease associated with exposure to contaminants in the water supply at Camp Lejeune; wartime and service on or after January 1, 1947.  
38 C.F.R. §3.309 Disease subject to presumptive service connection.  
38 C.F.R. §3.2500 Review of decisions  
38 C.F.R. §3.2502 Return by higher-level adjudicator or remand by the Board of Veterans' Appeals.  
38 C.F.R. §3.2601 Higher-level review  
38 C.F.R. §4.104 Schedule of ratings - cardiovascular system. [DC 7101]  
PL 117-168 PACT Act

## **REFERENCES:**

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





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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](http://www.va.gov).

