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On appeal from the decision of the
Department of Veterans Affairs Regional Office in Louisville, Kentucky

THE ISSUES

1. Entitlement to service connection for a hiatal hernia.

2. Entitlement to service connection for post-traumatic stress disorder (PTSD).

3. Entitlement to an increased evaluation for duodenal ulcer disease, currently evaluated as 20 percent disabling.

REPRESENTATION

Appellant represented by: Paralyzed Veterans of America, Inc.

ATTORNEY FOR THE BOARD

L. J. Nottle, Associate Counsel

INTRODUCTION

The veteran served on active duty from June 1966 to June 1968.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from June 1994 and November 1995 rating decisions of the Department of Veterans Affairs (VA) Regional Office in Louisville, Kentucky (RO), which denied the veteran service connection for a hiatal hernia and for PTSD, and granted service connection and assigned a noncompensable evaluation for duodenal ulcer disease.

The Board notes that the RO issued a rating decision in May 1995 increasing the veteran's evaluation for duodenal ulcer disease to 20 percent. The Court of Veterans Appeals has held that where a veteran has filed a notice of disagreement as to the assignment of a disability evaluation, a subsequent rating decision awarding a higher rating, but less than the maximum available benefit, does not abrogate the pending appeal. See AB v. Brown, 6 Vet. App. 35, 38 (1993). Therefore, while the veteran appealed the RO's June 1994 rating decision assigning a noncompensable evaluation for duodenal ulcer disease, the subsequent partial grant of 20 percent does not terminate the issue on appeal.

The Board also notes that the veteran appears to have initiated an appeal of the RO's July 1997 denial of service connection for severe chest pain, severe joint pains, failing eyesight, and memory loss secondary to herbicide exposure. In a VA Form 21-4138 (Statement in Support of Claim) received in September 1997, and a VA Form 9 (Appeal to Board of Veterans' Appeals) received in November 1997, the veteran indicated that he still felt that his problems were caused by his exposure to Agent Orange. As no action has been taken in response to the veteran's statements, the matter is referred to the RO for appropriate development.

The Board has rendered a decision on the issues of entitlement to service connection for hiatal hernia, and entitlement to service connection for PTSD. The issue of entitlement to an evaluation in excess of 20 percent for duodenal ulcer disease is addressed in the REMAND portion of this decision.

CONTENTIONS OF APPELLANT ON APPEAL

The veteran contends that he is entitled to service connection for a hiatal hernia and PTSD, as the former results from his service-connected duodenal ulcer disease and the latter results from stressors experienced in service. The veteran's representative maintains that the claim of entitlement to service connection for hiatal hernia has not been considered by the RO on a secondary basis, and that therefore, a REMAND is in order.

DECISION OF THE BOARD

The Board, in accordance with the provisions of 38 U.S.C.A. § 7104 (West 1991 & Supp. 1997), has reviewed and considered all of the evidence and material of record in the veteran's claims file. Based on its review of the relevant evidence in this matter, and for the following reasons and bases, it is the decision of the Board that the evidence supports a grant of service connection for a hiatal hernia. It also is the decision of the Board that the preponderance of the evidence is against the veteran's claim of entitlement to service connection for PTSD.

FINDINGS OF FACT

1. There is competent medical evidence linking secondarily the veteran's hiatal hernia to his service-connected duodenal ulcer disease.

2. The veteran indicated on induction into the service that he had had nervous trouble.

3. The veteran has not been shown to have PTSD.

CONCLUSIONS OF LAW

1. The veteran's hiatal hernia is proximately due to his service-connected duodenal ulcer disease. 38 U.S.C.A. §§ 1110, 5107 (West 1997); 38 C.F.R. §§ 3.303, 3.310(a) (1997).

2. The veteran's claim of entitlement to service connection for PTSD is not well grounded. 38 U.S.C.A. § 5107(a) (West 1997).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

A. Hiatal Hernia

The veteran contends that he developed a hiatal hernia from his service-connected duodenal ulcer disease, and that therefore, service connection for that disorder is warranted on a secondary basis. Allegedly, since service, his ulcer medication has caused continuous vomiting, which has put stress on his esophagus and has resulted in a hernia.

The law provides that a veteran is entitled to service connection for a disease or injury incurred in or aggravated by service. 38 U.S.C.A. § 1110 (West 1997); 38 C.F.R. § 3.303 (1997). In addition, service connection may be granted for a disability that is proximately due to or the result of a service-connected disability. When service connection is established for a secondary condition, the secondary condition is considered part of the original condition. 38 C.F.R. § 3.310(a). In cases involving a question of medical causation, competent medical evidence is required to link directly or secondarily the claimed condition to the veteran's period of active service. See Lathan v. Brown, 7 Vet.App. 359, 365 (1995); Caluza v. Brown, 7 Vet.App. 498, 506 (1995); Grottveit v. Brown, 5 Vet.App. 91, 93 (1993). The preliminary question before the Board, however, is whether the veteran has submitted a well-grounded claim within the meaning of 38 U.S.C.A. § 5107(a), and if so, whether the VA has properly assisted him in the development of his claim. A "well-grounded" claim is one that is plausible, capable of substantiation or meritorious on its own. Murphy v. Derwinski, 1 Vet.App. 78, 81 (1990). Having viewed the veteran's contentions and the evidence of record in the light most favorable to his claim, the Board finds that the veteran has presented a claim that is not implausible. The Board also is satisfied that all relevant facts have been fully developed.

In this case, service medical records are devoid of evidence that the veteran was treated for a hiatal hernia during active service. However, they reflect that he complained of vomiting on four occasions.

Post-service medical evidence dated as early 1978 shows that the veteran has regularly sought treatment for nausea, vomiting and epigastric pain since discharge. Those symptoms have been diagnosed as peptic esophagitis and gastroenteritis.

By letter dated in October 1984, Jerry L. Yon, M.D.,

indicated that he had seen the veteran for stomach pains, nausea and vomiting of 17 years duration. A physical evaluation revealed gastritis. Dr. Yon advised the veteran to refrain from taking salicylate-containing medication, but to continue taking Tagamet. He indicated that if the symptoms did not then abate, an endoscopy would be performed to check the effect of Tagamet.

During a VA outpatient treatment visit in 1993, the veteran presented with epigastric complaints and was diagnosed with a hiatal hernia. A hiatal hernia with regurgitation or gastroesophageal reflux was confirmed on VA examination in May 1994. A right inguinal hernia with gastroesophageal reflux disease was confirmed during VA outpatient treatment visits in June and August 1995.

By letter dated in August 1994, J. K. Phillips, Jr., M.D., indicated that he had been treating the veteran for 18 years for reported abdominal pain, which had been proven by gastroscopic findings to be peptic ulcer disease. Dr. Phillips did not relate the pain to the veteran's hiatal hernia.

During a VA Agent Orange examination in August 1995, gastroesophageal reflux disease and a right inguinal hernia were diagnosed. In August 1997, the veteran underwent a right inguinal hernia repair.

By letter dated in April 1998, Craig M. Bash, M.D., wrote that it was likely that the veteran's vomiting was secondary to his service-connected duodenal ulcer disease and a causative fact in the development of the hiatal hernia. He explained that it was well known that an increase in abdominal pressure increases one's risk for developing inguinal hernias, and that he believed the risk was equally applicable to hiatal hernias. He noted that a patient develops gastroesophageal reflux when the gastroesophageal junction is comprised with a hiatal hernia because the valvular mechanism is faulty. Following reflux, the patient might develop esophagitis, Barrett's esophagitis, strictures, or ulcerations, all of which might lead to esophageal neoplasm. Dr. Bash's opinion was based on all pertinent evidence contained in the claims file.

Clearly, the evidence shows that the veteran has been vomiting regularly since active service. According to Dr. Bash, that symptom results from the veteran's duodenal ulcer disease, which is service connected, and has caused the veteran's hiatal hernia. Inasmuch as the record includes competent medical evidence linking the veteran's hiatal hernia secondarily to his service-connected duodenal ulcer disease, the veteran's claim for service connection for a hiatal hernia must be granted under 38 C.F.R. § 3.310(a).

B. PTSD

The veteran asserts that he developed PTSD as a result of stressors experienced in service. Allegedly, those stressors include: receiving gunfire from snipers during Operations Iron Triangle and Cedar Fall in Vietnam; witnessing four

fellow servicemen killed as a result of an accident involving his unit; burying approximately 985 North Vietnamese soldiers and using bulldozers to cover their graves with dirt; and witnessing the deaths of several blacks during riots at Fort Campbell.

As stated previously, the Board must first determine whether the veteran's PTSD claim is well grounded. While his claim need not be conclusive, it must be accompanied by supporting evidence. Tirpak v. Derwinski, 2 Vet. App. 609, 611 (1992). In the absence of evidence of a well-grounded claim, there is no duty to assist the veteran in developing the facts pertinent to his claim, and the claim must fail. Epps. v. Gober, 126 F.3d 1464, 1467-1468 (Fed. Cir. 1997).

To establish that a claim for service connection is well grounded, the veteran must demonstrate the incurrence or aggravation of a disease or injury in service, the existence of a current disability, and a nexus between the in-service injury or disease and the current disability. Id. Medical evidence is required to prove the existence of a current disability and to fulfill the nexus requirement. Lay or medical evidence, as appropriate, may be used to prove service incurrence. See Caluza, 7 Vet. App. at 506.

Alternatively, a veteran may establish a well-grounded claim for service connection under the chronicity provision of 38 C.F.R. § 3.303(b), which is applicable where evidence, regardless of its date, shows that a veteran had a chronic condition in service or during an applicable presumption period, and that that same condition currently exists. Such evidence must be medical unless the condition at issue is a type as to which, under case law, lay observation is considered competent to demonstrate its existence. If the chronicity provision is not applicable, a claim still may be well grounded pursuant to the same provision if the evidence shows that the condition was observed during service or any applicable presumption period and continuity of symptomatology was demonstrated thereafter, and includes competent evidence relating the current condition to that symptomatology. Savage v. Gober, 10 Vet. App. 488, 495-98 (1997).

On pre-induction examination in January 1966, the veteran marked that he had had nervous trouble, but the examining physician noted no psychiatric abnormalities. During active service, the veteran did not seek treatment for PTSD, or any other psychiatric problem.

The veteran underwent a VA PTSD examination in July 1995, after which the examiner diagnosed no psychiatric illness. The remainder of post-service medical records show that the veteran sought treatment on numerous occasions for various conditions unrelated to his mental health.

Clearly, beyond the veteran's contentions, the record contains no evidence establishing that the veteran currently has PTSD. As the veteran is a layman with no medical training and expertise, his statements, alone, are insufficient to establish that such a condition exists. See

Espiritu v. Derwinski, 2 Vet.App. 492, 494-5 (1992) (holding that laypersons are not competent to offer medical opinions). In the absence of competent medical evidence of PTSD on which to predicate a grant of service connection, there can be no valid claim. See Brammer, 3 Vet.App. 223, 225 (1992).

Based on the foregoing, the Board concludes that the veteran has failed to meet his initial burden of submitting evidence of a well-grounded claim of entitlement to service connection for PTSD. Therefore, his claim for that benefit must be denied.

As the veteran has failed to meet his initial burden of submitting evidence of a well-grounded claim, the VA is under no duty to assist him in developing the facts pertinent to that claim. See Epps, 126 F.3d at 1468. That notwithstanding, the Board views its discussion as sufficient to inform the veteran of the elements necessary to well ground his claim, and an explanation as to why his current attempt fails. As the Board is not aware of the existence of additional evidence that might well ground the veteran's claim, no duty to notify arises under 38 U.S.C.A. § 5103(a). See McKnight v. Gober, 131 F.3d 1483, 1484-1485 (Fed. Cir. 1997).

The Board recognizes that the aforementioned issue is being disposed of in a manner that differs from that employed by the RO. The RO denied the veteran's claim on the merits, while the Board has concluded that it is not well grounded. The United States Court of Veterans Appeals has held that when an RO does not specifically address the question of whether a claim is well grounded, but rather, proceeds to adjudication on the merits, there is no prejudice to the veteran solely from the omission of the well-grounded analysis. Meyer v. Brown, 9 Vet. App. 425, 432 (1996). Therefore, in this case, the veteran has not been prejudiced by the manner in which the Board has disposed of the aforementioned claim.

ORDER

Service connection for a hiatal hernia is granted.

Service connection for PTSD is denied.