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## ORDER

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 pancreatic cancer is granted.

Entitlement to service connection for cause of the Veteran's death is granted.

## FINDINGS OF FACT

1. The Veteran served in Qatar from May 2006 through September 2006 and was diagnosed with pancreatic cancer in May 2007.
2. An August 2018 Certificate of Death shows that the Veteran died of massive weight loss and liver failure due to extensive metastatic carcinoma of the liver, lungs, and lymph nodes due to primary carcinoma of the pancreas.

## CONCLUSIONS OF LAW

1. The criteria for service connection for pancreatic cancer are met. 38 U.S.C. §§ 1110, 1120, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303.
2. The criteria for establishing entitlement to service connection for the cause of the Veteran's death are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.312.

## REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from January 1985 to December 2010. The Veteran passed away in August 2018. The appellant is the Veteran's surviving spouse who has been properly substituted as a claimant for the service connection claims pending at the time of the Veteran's death.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from an October 2018 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO).

This matter was previously before the Board in February 2020. The claim was remanded for the RO to provide VA examination opinions. The RO provided VA opinions in June and August 2020. Thus, the Board finds that the RO substantially complied with the February 2020 Board remand directive and that the matter has been properly returned to the Board for appellate consideration. *Stegall v. West*, 11 Vet. App. 268 (1998).

## Service Connection

Service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by service. 38 U.S.C. §§ 1110, 1131; 38 C.F.R. § 3.303 (a). Service connection requires: (1) the existence of a present 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); see also *Caluza v. Brown*, 7 Vet. App. 498 (1995). Service connection may also be granted for any disease diagnosed after discharge when the evidence establishes that the disease was incurred in service. 38 C.F.R. § 3.303 (d).

In addition, for certain chronic diseases, a presumption of service connection arises if the disease is manifested to a degree of 10 percent within one year following discharge from service. 38 C.F.R. §§ 3.307, 3.309(a). When a chronic disease is not shown within one year after service, under 38 C.F.R. § 3.303 (b) for the showing of chronic disease in service, there is required a combination of manifestations sufficient to identify the disease entity

and sufficient observation to establish chronicity at the time.

When the fact of chronicity in service is not adequately supported, a showing of continuity after discharge is required to support a claim for such diseases; however, such continuity of symptomatology may only support a claim for those chronic diseases listed under 38 C.F.R. §§ 3.303(b), 3.309(a); see *Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2013).

A Persian Gulf veteran is defined as a veteran who served on active duty in the Armed Forces in the Southwest Asia Theater of operations during the Persian Gulf War. See 38 U.S.C. § 1117; 38 C.F.R. § 3.317(d)(1). The Southwest Asia Theater of operations includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations. See 38 U.S.C. § 1117; 38 C.F.R. § 3.317 (d)(2).

Under 38 U.S.C. § 1117(a)(1), compensation is warranted for a Persian Gulf veteran who exhibits objective indications of a "qualifying chronic disability" that became manifest during service on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10 percent during the presumptive period prescribed by the Secretary. To constitute a "qualifying" chronic disability, the chronic disability must not be attributed to any known clinical disease by history, physical examination, or laboratory tests. See 38 U.S.C. § 1117; 38 C.F.R. § 3.317 (a)(1). The term "objective indications of chronic disability" includes both "signs," in the medical sense of objective evidence perceptible to an examining physician, and other, non-medical indicators that are capable of independent verification. See 38 U.S.C. § 1117; 38 C.F.R. § 3.317 (a)(3). Signs or symptoms which may be manifestations of undiagnosed illness or medically unexplained chronic multi-symptom illness include, but are not limited to: Fatigue, signs or symptoms involving skin, headache, muscle pain, joint pain, neurologic signs and symptoms, neuropsychological signs or symptoms, signs or symptoms involving the respiratory system (upper or lower), sleep disturbances, gastrointestinal signs or symptoms, cardiovascular signs or symptoms, abnormal weight loss, menstrual disorders. See 38 U.S.C. § 1117; 38 C.F.R. § 3.317(b).

A qualifying chronic disability means a chronic disability resulting from any of the following (or any combination of the following): An undiagnosed illness; the following medically unexplained chronic multi-symptom illnesses that are defined by a cluster of signs or symptoms: Chronic fatigue syndrome; Fibromyalgia; Irritable bowel syndrome; Any diagnosed illness that the Secretary determines warrants a presumption of service-connection; or Any other illness that the Secretary determines meets the following criteria for a medically unexplained chronic multi-symptom illness. See 38 U.S.C. § 1117; 38 C.F.R. § 3.317(a)(2). The term medically unexplained chronic multi-symptom illness means a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities. Chronic multi-symptom illnesses of partially understood etiology and pathophysiology will not be considered medically unexplained. See 38 U.S.C. § 1117; 38 C.F.R. § 3.317(a)(2).

Disabilities that have existed for 6 months or more and disabilities that exhibit intermittent episodes of improvement and worsening over a 6-month period will be considered chronic. The 6-month period of chronicity will be measured from the earliest date on which the pertinent evidence establishes that the signs or symptoms of the disability first became manifest. A chronic disability resulting from an undiagnosed illness shall be rated using evaluation criteria from part 4 of this chapter for a disease or injury in which the functions affected, anatomical localization, or symptomatology are similar. A disability shall be considered service connected for purposes of all laws of the United States. 38 U.S.C. § 1117 38 C.F.R. § 3.317(a)(4). The applicable presumptive period specified in 38 C.F.R. § 3.317(a)(1)(i) has been extended several times and it currently ends December 31, 2021.

Compensation shall not be paid if there is affirmative evidence that an undiagnosed illness was not incurred during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War; or if there is affirmative evidence that an undiagnosed illness was caused by a supervening condition or event that occurred between the veteran's most recent departure from active duty in the Southwest Asia theater of operations during the Persian Gulf War and the onset of the illness; or if there is affirmative

evidence that the illness is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs. See 38 U.S.C. § 1117; 38 C.F.R. § 3.317(c).

VA is responsible for determining whether the evidence supports the claim or is in relative equipoise, with the Veteran prevailing in either event, or whether a preponderance of the evidence is against the claim, in which case the claim is denied. 38 U.S.C. § 5107; Gilbert v. Derwinski, 1 Vet. App. 49 (1990). When there is an approximate balance of positive and negative evidence regarding any issue material to the determination, the benefit of the doubt is afforded the claimant.

#### 1. Entitlement to service connection for pancreatic cancer

The Appellant claims the Veteran's pancreatic cancer is related to in-service exposure to hazardous chemicals, including exposure to burn pits in Qatar. For the reasons discussed below, the Board finds service connection is warranted.

Service treatment records (STRs) do not reflect any symptoms, diagnosis, or treatment for pancreatic cancer.

Post service, in September 2002 private treatment records the Veteran reported having jobs or hobbies which involved exposure to chemicals, dust, or loud noises. He also admitted to use of tobacco products.

In April 2008 private treatment records the Veteran reported smoking for approximately 25 years. He smokes a pack of cigarettes a day.

In May 2017 private treatment records the Veteran was diagnosed with pancreatic cancer.

A December 2019 VA examination report indicated review of the Veteran's claims file, recounted the Veteran's history, and recited his complaints. It was opined that the Veteran's pancreatic cancer is less likely than not related to his active service. It was reasoned:

There is objective evidence of Veteran's cause of death from pancreatic cancer as per death certificate 8-8-2018 stating massive weight loss and liver failure, extensive metastatic carcinoma of liver, lungs, lymph nodes due to primary carcinoma of pancreas. STR's have objective evidence of Veteran's workplace occupational exposures to methylene chloride, perchlorethylene, petroleum distillate, methyl ethyl keton, toluene, lead chromate, which required personal protective equipment (wear rubber apron and gloves, faceshield). Veteran served in Airforce for 26 years and was involved in ground support equipment. Veteran was properly trained on use of personal protective equipment. STR's are silent for any c/o, evaluation or treatment of specific incidents of exposures to methylene chloride, perchlorethylene, petroleum distillate, methyl ethyl keton, toluene, lead chromate. There is evidence in the STR's of ongoing occupational health examinations in which there was no exposures above the limits of measured concentration or intensity to any of the chemicals. Post deployment exam was silent for any c/o's, evaluation or treatment for any occupational exposures to methylene chloride, perchlorethylene, petroleum distillate, methyl ethyl keton, toluene, lead chromate. There is no evidence in the medical literature that establishes that pancreatic cancer is due to methylene chloride, perchlorethylene, petroleum distillate, methyl ethyl keton, toluene, or lead chromate. Per medical literature, pancreatic cancer is due to mutated cells that grow out of control, forming a tumor. The exact cause is not known, certain risk factors are strongly linked to the disease, including tobacco smoking and obesity. There is objective evidence that Veteran had smoking history of 30+years of 2 pk/day.

A May 2020 VA examination report indicated review of the Veteran's claims file, recounted the Veteran's history, and recited his complaints. It was opined that the Veteran's pancreatic cancer is less likely than not related to his active service. It was reasoned:

The Veteran's primary cancer is pancreatic Ca. The specific etiology of pancreatic cancer has not been determined. There are no known exposures which cause pancreatic Ca. Risk factors for pancreatic cancer are smoking, chronic pancreatitis, and possible genetic links. This is based on current literature review and the article from Mayo Clinic cited above. Therefore, it is less likely than not that the veteran's pancreatic Ca was incurred in service or due to exposures, as delineated in this request, while in service.

A June 2020 VA examination report indicated review of the Veteran's claims file, recounted the Veteran's history, and recited his complaints. It was opined that the Veteran's pancreatic cancer and/or thrombophlebitis is less likely than not etiologically related to his active service, to include his in-service exposure to environmental hazards while in Qatar (burn pits, pesticide strips, and sand/dust, as discussed above.) It was reasoned:

This examiner read and acknowledge [the] statement from claimant received 5/27/2020 citing that studies show that dichlorvos (DDVP) the chemical in pesticide strips can cause pancreatic cancer; However comprehensive investigation by this examiner on this matter failed to confirm the claimant's statement. Dichlorvos or DDVP (2,2-Dichloroethyl dimethylphosphate) is an organophosphate insecticide that has been in use in the United States and elsewhere since its registration in 1948. It is used for a variety of agricultural, commercial, industrial, and domestic purposes. There had been studies conducted to evaluate cancer risk from DDVP (2,2-Dichloroethyl dimethyl phosphate) exposure among pesticide applicators enrolled in the Agricultural Health Study (AHS). The AHS used a cohort of 57,311 pesticide applicators in North Carolina and Iowa, enrolled from 1993-1997 and followed for cancer through 2004. A comprehensive questionnaire collected information on exposure to DDVP and potential confounders. Among the 49,762 licensed pesticide applicators eligible for analysis, 4,613 reported use of DDVP. DDVP exposure was classified as intensity-weighted cumulative exposure days (IWED), calculated as [years of use × days per year × intensity level]. Poisson regression analysis was used to calculate rate ratios (RR) and 95% confidence intervals (CI) to evaluate the association of DDVP exposure among 2,943 incident cases of cancer. Results: DDVP exposure was not associated with any cancer studied. Observed no elevation in risk among lymphohematopoietic cancers; consistent as of today evaluation there is no sufficient evidence to determine whether an association exists between the Veteran's pancreatic cancer and/or thrombophlebitis and the Veteran's in-service exposure to environmental hazards while in Qatar (burn pits, pesticide strips, and sand/dust, as discussed above) to include dichlorvos (DDVP)... Furthermore, based on medical literature smoking is one of the most important risk factors for pancreatic cancer. The risk of getting Pancreatic cancer is about twice as high among smokers compared to those who have never smoked. About 25% of pancreatic cancers are thought to be caused by cigarette smoking. Noted, there is objective and correlated evidence that Veteran had smoking history of 30+years of 2 pk/day.

The Board has reviewed all of the lay and medical evidence of record in conjunction with the applicable laws and regulations and finds the pancreatic cancer is presumptively related to service.

Initially, the Board notes a December 2022 VA memo indicated the Veteran served in Qatar from May 2006 through September 2006. He reported being exposed to pesticide strips and sand/dust during his deployment. The memorandum also indicated the Veteran is a covered Veteran for toxic exposure.

The Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act, was enacted on August 10, 2022. This new law expands VA health care and benefits for veterans exposed to burn pits or other toxic substances during military service. The PACT Act lists several diseases or illnesses that can be considered presumptively service-connected if a veteran was exposed to burn pits or other toxic substances during the Vietnam, Gulf War, and post 9/11 eras. Veterans who were exposed to burn pits or toxic substances specifically during the Gulf War and post 9/11 eras are eligible for presumptive service connection if they have a current disability diagnosed as brain cancer, glioblastoma, respiratory cancer of any type, gastrointestinal cancer of any type, head cancer of any type, lymphoma of any type, lymphatic cancer of any type, neck cancer, pancreatic cancer, reproductive cancer of any type, kidney cancer, melanoma, asthma (diagnosed after service), chronic rhinitis, chronic sinusitis, constrictive bronchiolitis or obliterative bronchiolitis, emphysema, granulomatous disease, interstitial lung disease (ILD), pleuritis, pulmonary fibrosis, sarcoidosis, chronic bronchitis, and chronic obstructive pulmonary disease (COPD). See PACT Act, Pub. L. No. 117-168 § 3373, 136 Stat. 1759 (2022).

Under the PACT Act, unless affirmative evidence proves otherwise, any covered veteran is presumed to have been exposed to certain substances, chemicals, and airborne hazards during their service. A "covered veteran" means any veteran who on or after August 2, 1990, performed active military, naval, air, or space service while assigned to a duty station in

Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, or United Arab Emirates; or on or after September 11, 2001, performed active military, naval, air, or space service while assigned to a duty station in Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, Uzbekistan, or any other country determined relevant by the Secretary.

Military service personnel records confirm that in 2006 the Veteran completed active service in Southwest Asia, specifically Qatar, during the Persian Gulf War. Accordingly, the Veteran is presumed to have been exposed to burn pits and other toxins pursuant to the newly enacted PACT Act requirements.

The Veteran has a diagnosis of pancreatic cancer and is presumed to have been exposed to burn pits and other toxins based upon his confirmed active service in Southwest Asia during the Persian Gulf War. Thus, he meets the criteria for service connection on a presumptive basis under 38 U.S.C. § 1120 for those disabilities. See PACT Act, Pub. L. No. 117-168 § 3373, 136 Stat. 1759 (2022).

In granting service connection for the Veteran's pancreatic cancer under the PACT Act, the Board acknowledges that the Veteran would not qualify for service connection under other theories of entitlement raised by the record.

As noted above, under 38 U.S.C. § 1117(a)(1), compensation is warranted for a Persian Gulf veteran who exhibits objective indications of a "qualifying chronic disability." To constitute a "qualifying" chronic disability, the chronic disability must not be attributed to any known clinical disease by history, physical examination, or laboratory tests. See 38 U.S.C. § 1117; 38 C.F.R. § 3.317(a)(1).

Although the Veteran participated in the Gulf War, because he had an actual diagnosis of pancreatic cancer, the presumptive service connection provisions regarding Gulf War veterans are not for application. See 38 C.F.R. § 3.317 (providing the basis for presumptive service connection for veterans with undiagnosed illnesses who served during the Gulf War with symptoms such as fatigue, headache, muscle pain, joint pain, and abnormal weight loss).

The Board is also unable to grant service connection on a direct basis because the evidence of record does not show that the claimed disability was incurred in or aggravated by military service. The record does not show that the Veteran's pancreatic cancer was diagnosed within one year of service, and the Veteran did not contend that he has experienced symptoms associated with pancreatic cancer continuously since separation. No treatment provider has opined that the Veteran's pancreatic cancer was directly due to his period of service. Therefore, the evidence does not show that direct service connection is warranted.

Accordingly, entitlement to service connection for pancreatic cancer on a presumptive basis under 38 U.S.C. § 1120 is warranted. See PACT Act, Pub. L. No. 117-168 § 3373, 136 Stat. 1759 (2022).

## 2. Entitlement to service connection for cause of the Veteran's death Cause of death

The Appellant contends that the Veteran's cause of death is etiologically related to his active-duty service. For the reasons discussed below, the Board agrees.

Service connection for the cause of a Veteran's death requires a showing of (1) the existence of a service-connected disability, and (2) a causal relationship, either principle or contributory, between the disability and the Veteran's death. 38 C.F.R. § 3.312.

Generally, to establish that there was a service-connected disability there must be competent evidence showing: (1) the Veteran suffered from a disability; (2) an in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the claimed disability and the in-service injury incurred or aggravated during service. 38 U.S.C. § 1110; 38 C.F.R. § 3.303; *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004).

The death of a Veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the principal or a contributory cause of death. The issue involved will be determined by exercise of sound judgment, without recourse to speculation, after a careful analysis has been made of all the facts and circumstances surrounding the death of the Veteran, including, particularly,

autopsy reports. 38 C.F.R. § 3.312(a).

A service-connected disability will be considered as the principal, or primary, cause of death when such disability, singly or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related thereto. 38 C.F.R. § 3.312(b).

A contributory cause of death is inherently one not related to the principal cause. In determining whether the service-connected disability contributed to death, it must be shown that it contributed substantially or materially; that it combined to cause death; or that it aided or lent assistance to the production of death. It is not sufficient to show that it casually shared in producing death, but rather it must be shown that there was a causal connection. 38 C.F.R. § 3.312(c)(1); see also *Gabrielson v. Brown*, 7 Vet. App. 36, 39 (1994).

Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary. The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. 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; see also *Gilbert*, 1 Vet. App. at 53.

Turning to the evidence, the Veteran's August 2018 death certificate identifies the immediate cause of death as massive weight loss and liver failure due to extensive metastatic carcinoma of the liver, lungs, and lymph nodes due to primary carcinoma of the pancreas. Extensive venous thrombosis and pulmonary emboli were identified as significant conditions.

At the time of his passing, the Veteran was service-connected for tinnitus, exercise induced bronchial asthma, bilateral lower extremity varicose veins, degenerative disc disease, moderate chondromalacia, allergic rhinitis, left knee scars, and primary insomnia.

An August 2020 VA examination report indicated review of the Veteran's claims file, recounted the Veteran's history, and recited his complaints. The examiner opined it is less likely than not that the Veteran's service-connected varicose veins contributed substantially or materially to the Veteran's death. It was reasoned:

the varicose veins and superficial thrombophlebitis did not play a role in the development of the veterans DVT and did not contribute to the veteran's death...The pancreatic cancer was the root cause of the veteran's death. The DVT almost certainly arose due to complications of that disease or treatment. The claimant specified the Veteran's case is not routine. Unfortunately, this sequence of events is not uncommon, as malignancy is a leading cause of DVT. Relatively speaking, the superficial thrombophlebitis is a minor condition and more likely than not played no role in the Veteran's decline or death.

The Board has reviewed all of the lay and medical evidence of record in conjunction with the applicable laws and regulations and finds the Veteran's cause of death is related to a service-connected disability.

In this regard the Board finds the August 2020 VA examination discussed above, is the most probative evidence of record. The examiner found the Veteran's varicose veins and superficial thrombophlebitis did not contribute to the veteran's death. Notably the examiner found the pancreatic cancer was the root cause of the veteran's death. As reflected above, the Board has granted service connection for pancreatic cancer on a presumptive basis.

Accordingly, entitlement to service connection for the Veteran's cause of death is warranted.

JONATHAN B. KRAMER

Veterans Law Judge

Board of Veterans' Appeals

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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.