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ORDER

Entitlement to service connection for prostate cancer is granted.

Entitlement to service connection for chronic kidney disease is granted.

Entitlement to service connection for cause of death is granted.

Entitlement to burial benefits is granted.

FINDINGS OF FACT

1. The evidence is at least approximately at balance as to whether the Veteran's prostate cancer is attributable to his service.
2. The evidence is at least approximately at balance as to whether the Veteran's chronic kidney disease is attributable to his service.
3. The Veteran's now service-connected prostate cancer and chronic kidney disease contributed substantially and materially to his death.
4. The appellant personally incurred expenses related to the Veteran's funeral and burial.

CONCLUSIONS OF LAW

1. Resolving reasonable doubt in the Veteran's favor, the criteria for entitlement to service connection for prostate cancer are met. 38 U.S.C. §§ 1131, 5107(b); 38 C.F.R. §§ 3.102, 3.303.
2. Resolving reasonable doubt in the Veteran's favor, the criteria for entitlement to service connection for chronic kidney disease are met. 38 U.S.C. §§ 1131, 5107(b); 38 C.F.R. §§ 3.102, 3.303.
3. The criteria for entitlement to service connection for the cause of the Veteran's death have been met. 38 U.S.C. §§ 1131, 1310, 5107; 38 C.F.R. § 3.102, 3.303, 3.312.
4. The criteria for service-connected burial benefits are met. 38 U.S.C. §§ 2302, 2303; 38 C.F.R. §§ 3.1700-3.1713.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran had active duty in the U.S. Marine Corps from October 1963 to October 1967, to include service in Vietnam. Regretfully, the Veteran passed away in September 2020.

The appellant is the Veteran's surviving spouse who, in April 2021 was granted substitute claimant status by a VA agency of original jurisdiction (AOJ) as to the Veteran's claims that were pending at the time of his death and sought service connection for his prostate cancer and chronic kidney disease. In addition, in her own capacity, the appellant applied for DIC benefits and burial benefits.

This case comes to the Board on appeal from a July 2022 AOJ rating decision that confirmed and continued the denial of denied service connection for the cause of the Veteran's death and service connection for kidney failure and prostate cancer. The AOJ also denied burial benefits in the letter notifying the Veteran of the service connection denials. The Veteran timely appealed.

Although the AOJ used the term accrued benefits, its grant of substitution to the appellant warrants characterization of the claims without the use of that term. *Reliford v. McDonald*,

27 Vet. App. 297, 302 (2015) (38 U.S.C. § 5121A allows "those eligible for accrued benefits with the opportunity to procedurally be substituted for deceased claimants in pending claims, enabling the surviving accrued-benefits beneficiary to proceed in the place of the deceased claimant to the completion of the original claim").

Service Connection

Here, the appellant contends that service connection is warranted for prostate cancer and chronic kidney disease due at least in part to the Veteran's exposure to contaminated water while he was stationed at Camp Lejeune during his active service. The A0J conceded that the Veteran was indeed stationed at Camp Lejeune, and his period at Camp Lejeune fell within the August 1, 1953, to December 31, 1987, period of time. Nonetheless, the A0J denied the Veteran's claims for service connection for these disabilities upon pointing out that neither prostate cancer nor chronic kidney disease could be deemed service connected on a presumptive basis.

Service connection may be granted on a presumptive basis for certain diseases associated with exposure to contaminants (defined as the volatile organic compounds (VOCs), trichloroethylene (TCE), perchloroethylene (PCE or PERC), benzene, and vinyl chloride) in the on-base water supply located at Camp Lejeune, even if there is no record of such disease during service, provided that these diseases manifest to a compensable degree at any time after service at the U.S. Marine Corps Base Camp Lejeune and/or Marine Corps Air Station New River in North Carolina, during the period from August 1, 1953, to December 31, 1987. See 38 C.F.R. § 3.307(a)(7). Only the following diseases are deemed associated with exposure to contaminated water at Camp Lejeune: kidney cancer, liver cancer, Non-Hodgkin's lymphoma, adult leukemia, multiple myeloma, Parkinson's disease, aplastic anemia and other myelodysplastic syndromes, and bladder cancer. See 38 C.F.R. § 3.309(f). Neither prostate cancer nor chronic kidney disease is among the diseases for which VA has specifically determined a presumption of service connection is warranted.

Nevertheless, the Board must consider service connection on a direct basis. See 38 U.S.C. § 1113(b); 38 C.F.R. § 3.303(d) (the availability of service connection on a presumptive basis does not preclude consideration of service connection on a direct basis).

Service connection will be granted on a direct basis if the evidence demonstrates that current disability resulted from an injury or disease incurred in active military service. 38 U.S.C. § 1110; 38 C.F.R. § 3.303(a). Establishing service connection generally requires competent evidence of three things, i.e., current disability, an in service event, and a causal relationship between the current disability and such an event. *Saunders v. Wilkie*, 886 F.3d 1356, 1361 (Fed. Cir. 2018). Consistent with this framework, service connection is warranted for a disease first diagnosed after discharge when all of the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

Here, the A0J conceded in favorable findings of fact the Veteran's consumption of water at Camp Lejeune and, therefore, his exposure to contaminants present in Camp Lejeune water, as well as diagnoses of prostate cancer and chronic kidney disease. The Board is bound by these favorable findings. 38 U.S.C. § 5104(b)(4); 5104A; 38 C.F.R. § 20.801(a).

Therefore, the sole missing element of both claims for direct service connection purposes was that of causal relationship, or nexus.

Here, in June 2022, the appellant submitted an April 2022 medical opinion of Dr. C.K. Dr. C.K.'s opinion provided a thorough discussion of contaminants that, for VA purposes, were indisputably present in Camp Lejeune water during the Veteran's period of active service, an equally thorough discussion of the Veteran's medical conditions, to include his coronary conditions and diabetes mellitus, type II, as well as their side effects, such as the Veteran's obesity, as well as a thoughtful analysis of the causal relation between the Veteran's consumption of Camp Lejeune water and his prostate cancer and chronic kidney disease.

Basing his opinion on current medical literature and the Veteran's medical history, Dr. C.K. opined that it was at least as likely as not that the Veteran's exposure to contaminants present in water of Camp Lejeune either caused or, at the very least, contributed to his prostate cancer and chronic kidney disease. Dr. C.K. stressed, *inter alia*, the direct

causal connection between the Veteran's coronary conditions and his chronic kidney disease upon pointing out that the conditions eventually developed a comorbidity in the sense that each of these conditions had a causal amplifying effect on the other. As Dr. C.K. explained the reasons for his opinion based on an accurate characterization of the evidence, his opinion is entitled to substantial probative weight. See *Nieves-Rodriguez v. Peake*, 22 Vet. App. 295, 304 (2008) (most of the probative value of a medical opinion comes from its reasoning).

Although the July 2022 VA examiner found Dr. C.K.'s opinion deficient for failure to acknowledge the Veteran's diabetes, smoking, obesity, etc., and opined that the Veteran's chronic kidney disease was caused, rather than had a comorbidity with the Veteran's coronary conditions, the Appellant's Brief correctly points out that the July 2022 VA examiner overlooked Dr. C.K.'s acknowledgements of the Veteran's other conditions and contrary to the July 2022 VA examiner's impression Dr. C.K. did not enter an abstract opinion based solely on medical literature and wholly unmoored from the Veteran's medical history.

Indeed, Dr. C.K.'s reliance on medical literature was duly limited to utilizing general medical science for the purposes of assessing the Veteran's unique medical circumstances. Accordingly, the Board agrees with the appellant that the July 2022 VA examiner's opinion warrants allocation of lower probative value than the opinion of Dr. C.K.

In addition, the record before the Board includes a competent, credible, and probative opinion of the June 2017 VA examiner as to his claim for service connection for chronic kidney disease, as well as the Veteran's VA medical treatment records addressing his kidney disease and prostate cancer. The June 2017 VA examiner diagnosed the Veteran with chronic renal disorder stating that, by June 2017, the Veteran was experiencing stage III renal failure, with symptoms detected accidentally during a laboratory technician's review of the Veteran's blood test in June 2006. The VA examiner also stated that the Veteran's chronic kidney disease caused him to severely limit his daily water intake to accommodate his failing kidneys, exercise extreme caution with taking medications, and avoid nonsteroidal antiinflammatory medications. The May 2017 VA examiner also acknowledged the Veteran's diabetes diagnosed in 1985 and hypertension diagnosed in 1990 and observed that the Veteran's renal failure was amplifying the severity of each of these conditions, rather than being caused by either of these conditions or any other disability that the Veteran was experiencing at the time. Notably, the May 2017 VA examiner made no statement that could reasonably be construed as suggesting that the Veteran's chronic kidney condition could be attributed to any particular cause. Consistent with this opinion, the Veteran's VA medical treatment record reflected his treating medical practitioners' observation that the Veteran's kidney condition amplified his arteriosclerotic vascular disease with hypertension, cause a disruption of his liver function, and noted two foci, one in the right posterior peripheral zone of his prostate and one in the left posterior peripheral zone, with each focus being suspicious for carcinoma since 2010.

For the above reasons, the evidence is at least evenly balanced as to whether the Veteran's prostate cancer and kidney disease are related to his exposure to Camp Lejeune contaminated water. As the reasonable doubt created by this relative equipoise in the evidence must be resolved in favor of the appellant, entitlement to service connection for prostate cancer and chronic kidney disease is warranted. 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102.

DIC based on Cause of Death

Pursuant to 38 U.S.C. § 1310, DIC is paid to a surviving spouse of a qualifying veteran who died from a service-connected disability. See *Darby v. Brown*, 10 Vet. App. 243, 245 (1997); see also 38 U.S.C. § 1310(a); 38 C.F.R. § 3.5(a)(1). The death of a veteran is deemed attributable to a service-connected disability when the evidence establishes that such disability was either the principal or a contributory cause of death. 38 C.F.R. § 3.312(a).

A service-connected disability is deemed the principal, i.e., primary cause of death when the disability, singly or jointly with some other condition, was the immediate or underlying cause of death, or was etiologically related thereto. See 38 C.F.R. § 3.312(b). For a service-connected disability to be deemed a contributory cause of a veteran's death, it must be shown that it contributed substantially or materially, combined to cause death, and aided or lent assistance to the production of death. Thus, it is not sufficient to show that it just "shared" in producing death; rather, it must be shown that there was a causal connection. See 38 C.F.R. § 3.312(c)(1); *Gabrielson v. Brown*, 7 Vet. App. 36, 39 (1994).

The evidence reflects that Veteran's renal failure contributed substantially and materially to his cardiovascular conditions, and combined to cause his death from ventricular tachycardia since Dr. C.K. found the Veteran's chronic kidney disease comorbid with his coronary condition, reaching a conclusion substantively identical to the observations of the Veteran's treating VA practitioners and the May 2017 VA examiner. And while the July 2022 VA examiner found that the Veteran's coronary condition was among causes of his stage III renal failure, rather than vice-versa, the Board finds the opinions of Dr. C.K., May 2017 VA examiner, and the Veteran's treating medical practitioners more probative.

Accordingly, the Board concludes that the Veteran's service-connected renal failure was not the primary but qualified as a contributory cause of the Veteran's death within the meaning of 38 C.F.R. § 3.312(c)(1). Thus, entitlement to DIC benefits based on the cause of the Veteran's death is warranted.

Burial Benefits

Effective July 7, 2014, VA amended its regulations governing entitlement to monetary burial benefits. Specifically, VA eliminated the then-existing regulations, i.e., 38 C.F.R. §§ 3.1600 through 3.1612, and replaced them with new regulations renumbered as 38 C.F.R. §§ 3.1700 through 3.1713. See 79 Fed. Reg. 32,653–32,662 (June 6, 2014) (codified at 38 C.F.R. §§ 3.1700 through 3.1713). While both rules are equally favorable to the appellant, the Board notes that the final rule is applicable to claims for burial benefits pending on or after July 7, 2014, i.e., it governs the appellant's claim at bar since the Veteran passed away in 2000.

If a veteran dies as a result of a service-connected disability or disabilities, burial benefits should be paid. 38 U.S.C. § 2307; 38 C.F.R. § 3.1704(b). Since the Veteran's renal failure qualified as both service-connected and a contributory cause of his death within the meaning of § 3.312(c)(1), entitlement to burial benefits is warranted.

Jonathan Hager

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.