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ORDER

Entitlement to service connection for prostate cancer is granted.

Entitlement to service connection for coronary atherosclerosis and paroxysmal atrial fibrillation is granted.

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

Entitlement to service connection for erectile dysfunction is granted.

Entitlement to service connection for bone cancer is denied.

Entitlement to service connection for hyperlipidemia is denied.

FINDINGS OF FACT

1. Affording the Veteran the benefit of the doubt, his prostate cancer was caused by in-service exposure to herbicide agents.
2. Affording the Veteran the benefit of the doubt, his coronary atherosclerosis and paroxysmal atrial fibrillation was caused by in-service exposure to herbicide agents.
3. Affording the Veteran the benefit of the doubt, his diabetes mellitus, type II, was caused by in-service exposure to herbicide agents.
4. The Veteran's erectile dysfunction was caused by his now service-connected prostate cancer.
5. The evidence of record persuasively weighs against finding that bone cancer began during active service or was otherwise caused by service, to include claimed exposure to herbicide agents.
6. Hyperlipidemia is a laboratory finding and not, in and of itself, a disability for VA compensation purposes, and no disability manifested by hyperlipidemia has been demonstrated or alleged.

CONCLUSIONS OF LAW

1. The criteria for service connection for prostate cancer are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.
2. The criteria for service connection for coronary atherosclerosis and paroxysmal atrial fibrillation are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.
3. The criteria for service connection for diabetes mellitus, type II, are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.
4. The criteria for service connection for erectile dysfunction are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.310.
5. The criteria for service connection for bone cancer are not met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.
6. The criteria for entitlement to service connection for hyperlipidemia have not been met. 38 U.S.C. § 1110; 38 C.F.R. § 3.303; 61 Fed. Reg. 20,440, 20,445 (May 7, 1996).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran had active service in the United States Army from January 1969 to December 1971.

Rating decisions were issued under the legacy system in October 2017 and July 2018. In October 2018, the Veteran opted into the modernized review system, also known as the Appeals Modernization Act (AMA), by submitting a Rapid Appeals Modernization Program (RAMP) election form and selecting the higher-level review (HLR) lane. The agency of original jurisdiction (AOJ) issued a RAMP HLR decision in August 2019, which is the decision on appeal. In the September 2019 VA Form 10182, Decision Review Request: Board Appeal, the Veteran elected the Hearing docket. Therefore, the Board may only consider the evidence of record at the time of the RAMP opt-in, as well as any evidence submitted by the Veteran or his representative at the hearing or within 90 days following the hearing. 38 C.F.R. § 20.302(a).

The August 2019 rating decision found that new and relevant evidence had been received to readjudicate the above claims. This is a favorable finding by the agency of original jurisdiction (AOJ) and the Board will proceed to the address the claim on the merits. See 38 U.S.C. § 5104A; 38 C.F.R. § 3.104(c).

Service Connection

1. Entitlement to service connection for bone cancer
2. Entitlement to service connection for a heart disability, to include coronary atherosclerosis and paroxysmal atrial fibrillation
3. Entitlement to service connection for diabetes mellitus, type II
4. Entitlement to service connection for erectile dysfunction
5. Entitlement to service connection for hyperlipidemia
6. Entitlement to service connection for prostate cancer

Service connection may be established for a disability resulting from personal injury suffered or disease contracted in the line of duty in the active military, naval, or air service. 38 U.S.C. §§ 1110.

To establish a right to compensation for a present disability, a Veteran must show: "(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." *Davidson v. Shinseki*, 581 F.3d 1313, 1315-16 (Fed. Cir. 2009); *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004).

Certain chronic diseases will be presumed related to service, absent an intercurrent cause, if they were shown as chronic in service; or, if they manifested to a compensable degree within a presumptive period following separation from service; or, if they were noted in service (or within an applicable presumptive period) with continuity of symptomatology since service that is attributable to the chronic disease. 38 U.S.C. §§ 1101, 1112, 1113, 1137; 38 C.F.R. §§ 3.303, 3.307, 3.309. *Walker v. Shinseki*, 708 F.3d 1331, 1338 (Fed. Cir. 2013). These disabilities include diabetes mellitus, cardiovascular-renal disease, malignant tumors, and other organic diseases of the nervous system. There is no evidence or contention that any such problems manifested within the presumptive period and, as such, entitlement to service connection based on the foregoing is not for application.

The Veteran's service treatment records do not include complaints, treatment, or diagnoses related to the claimed disabilities. The Veteran does not contend otherwise.

After service, a May 1973 x-ray showed an essentially normal heart.

In December 2008, the Veteran underwent a percutaneous transluminal coronary angioplasty. Records also document coronary atherosclerosis, atrial fibrillation, and hyperlipidemia.

A July 2015 prostate biopsy showed invasive adenocarcinoma of the prostate.

A February 2017 bone scan was worrisome for active bony metastatic disease of the left ischium.

A September 2017 VA prostate cancer examination report documented prostate cancer from July 2015. Following examination, the examiner concluded that it was at least as likely as not that the prostate cancer was related to exposure to herbicides. The rationale was that VA guidelines had established a presumption that prostate cancer was related to exposure to herbicides. In addition, the erectile dysfunction was at least as likely as not incurred in or caused by prostate cancer because it was a well-known fact that prostate cancer could cause erectile dysfunction.

A May 2018 private treatment record noted a diagnosis of diabetes mellitus, type II.

Prostate Cancer, Diabetes Mellitus, Heart Disability, and Erectile Dysfunction

The Veteran has diagnoses of prostate cancer, diabetes mellitus, multiple heart disabilities, and erectile dysfunction. The Veteran does not allege that the disabilities began during service or otherwise were caused by service. No medical evidence suggests in-service onset. As such, service connection cannot be granted based on in-service onset. Instead, the Veteran asserts that the disabilities were caused by his in-service exposure to herbicide agents during his service in Korea.

With respect to service connection based on herbicide exposure, VA laws and regulation provide that a veteran who, during active military service, served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ (Demilitarized Zone) in an area in which herbicides are known to have been applied during that period, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to the contrary. 38 C.F.R. § 3.307(a)(6)(iv). The Department of Defense (DoD) has identified specific units it has cited that served in areas along the DMZ in Korea where herbicides were used between April 1, 1968, and August 31, 1972. 38 C.F.R. § 3.307(a)(6)(iv).

If a veteran was exposed to an herbicide agent during active service, certain diseases will be presumed to have been incurred in service if manifest to a compensable degree within specified periods, even if there is no record of such disease during service. 38 U.S.C. § 1116(a)(2); 38 C.F.R. §§ 3.307(a)(6), 3.309(e). The Veteran's diabetes mellitus, ischemic heart disease, and prostate cancer are among the list of presumptive diseases.

The Veteran's personnel file documents service in Company A 728th Military Police Battalion at Camp Hayes as a military police officer, as well as graduation from the noncommissioned officer academy class at Camp Casey, both in Korea. The service period in Korea was from May 1970 to April 1971.

In support of his claim, the Veteran submitted a December 2003 letter originally drafted for another service member from a member of ASCOM Compound. The ASCOM compound was 20 miles from the DMZ and "within the watershed of any and all land areas upon which the herbicides were applied.... Some of these chemicals were also applied in and around the ASCOM Compound." The other service member also allegedly had exposure to herbicide agents from who his clothing was washed and ironed and from other individuals.

A February 2005 letter from another service member reported, "I saw barrels of spray being stored on the loading dock at the supply depot in a restricted area at ASCOM." The letter also described how a bomber accidentally dropped herbicide on a rice paddy and how a farmer alleged that a water buffalo died from eating vegetation "around the village" and was given a new water buffalo.

A February 2005 letter from another fellow service member also noted that Agent Orange was stored at the ASCOM compound and was within the "watershed of any and all land areas upon which the herbicides were applied." The letter also stated, "I recall a building in the depot with barrels stacked up on the side of it. The barrels had the 'Hazardous Materials' symbol on them possibly a skull on it. The barrels were 55 gallons in size. I would load them on a pallet and onto 2 12 ton trucks that would then depart for destinations unknown to me. We also moved them from one area of the depot to another area. There were as many as 100 barrels or more, OD green in color. I recall something was written on it in white or yellow lettering, but I don't recall exactly what the wording was."

An undated letter regarding another service member indicated that the individual had served at the same locations as the Veteran and that there had been herbicide agents used in those locations.

An April 2011 letter from a service member in support of another veteran stated that during his service at the ASCOM depot from March 1968 to March 1969, "On two separate occasions in early July and mid-August 1968, I processed damage reports on barrels of material known to be the herbicide Agent Orange. The barrels were damaged (punctured) by the forks of lifts used to offload railcars by Korean civilian workers." In each case, approximately 15 gallons of content were lost and assigned a damaged amount based on the value of Agent Orange of \$385 per barrel. The spillage occurred about 125 feet from the rear fence of the ASCOM depot. The letter also noted, "I can also testify to the presence on numerous occasions of [Agent Orange] in single barrels upright on pallets in the rear of 2 12 ton trucks in the vehicles for issue location at point 40 on the depot grounds. This area was an area about 75 100 feet wide and 400 feet long immediately across the road and east of the QA branch office in building #1604."

Additional submissions included similar contentions and allegations.

The Veteran submitted Board decisions involving other veterans; however, these decisions involved different fact patterns, including different periods of service in Korea and/or service at different locations in Korea in addition to Camp Casey.

In an April 2017 statement, the Veteran alleged that while at the NCO academy, "As part of our training we conducted extensive field operations in and along the South Korean Demilitarized Zone in order to familiarize us with daily operational procedures where we conducted physical training exercises as well. On numerous occasions we were utilizing nearby natural water sources for hydration. The physical training conducted put us in direct contact within areas void of vegetation from being treated with growth retardant and herbicides as noted by the military command." The Veteran also alleged exposure to herbicide agents as part of his daily duties as a military police at his ASCOM duty station, including physically examining all storage and distribution warehouses and cargo exiting the ASCOM compound. The Veteran also patrolled areas devoid of vegetation, with herbicides sprayed by backpack sprayers.

A July 2019 DPRIS response from the Joint Services Records Research Center (JSRRC) noted examination of Company A, 728th Military Police Battalion unit records, which was located at Camp Hayes, ASCOM, Incheon City, Korea. The "records do not document the use, storage, spraying or transporting of Agent Orange or other tactical herbicides. In addition, the records do not mention or document any specific duties performed by Co A, 728th MP BN unit members along the DMZ."

During his April 2022 Board hearing, the Veteran described how around Camp Hayes in Korea there was very little grass or other vegetation. The Veteran reported observing the use of herbicides by Korean nationals spraying around the guard shack and gate where the Veteran was stationed. He could feel the mist hitting his face and hands and there was a foul taste in the Veteran's mouth. There were rice paddies immediately outside the base compound, so the Veteran believed herbicide use was limited to distribution by hand. He also witnessed the storage of Agent Orange on base, as "this was a major distribution point for Agent Orange. I mean we had numerous 55-gallon drums that were shipped out of there." The Veteran inventoried some of these barrels that were labeled with an orange stripe and/or skull and crossbones. The Veteran also testified about service at Camp Casey that was 10 miles from the DMZ. He conducted training along the DMZ and used the water from streams in the area. The Veteran also discussed how his clothing was washed using water from local rivers. He also shared common areas with other service members who had been exposed to Agent Orange.

A June 2022 statement from the Veteran contended that "he was stationed and placed in locations, near water streams and fellow military that w[ere] sprayed (by hand or aerial) or contaminated by Herbicides know as Agent Orange."

The Company A, 728th Military Police Battalion unit is not recognized by the DOD as operating in the Korean DMZ during the qualifying period.

Consequently, the Veteran must therefore demonstrate that he was actually present at or near the Korean DMZ during his period of time in the Republic of Korea in order to be afforded the presumption in this case. Affording the Veteran the benefit of the doubt, the Board finds that the evidence of record demonstrates actual presence on or near the Korean DMZ.

The Veteran's personnel records document service at Camp Hayes and Camp Casey. The Board has considered the Veteran's contentions that while at the NCO Academy at Camp Casey, he had training along the DMZ. The Board finds such a contention credible and consistent with the evidence of record. As such, the presumptive provisions of section 3.309(e) are applicable. As prostate cancer, diabetes mellitus, and ischemic heart disease are on the list of presumptive disabilities under section 3.309(e), entitlement to service connection for prostate cancer, coronary atherosclerosis and paroxysmal atrial fibrillation, and diabetes mellitus, type II, is warranted.

As to the erectile dysfunction, the September 2017 VA examination report concluded that it was at least as likely as not that the erectile dysfunction was caused by the now service-connected prostate cancer. As such, entitlement to service connection for erectile dysfunction is warranted. See 38 C.F.R. § 3.310.

Accordingly, the Veteran's claims for service connection for prostate cancer, coronary atherosclerosis and paroxysmal atrial fibrillation, erectile dysfunction, and diabetes mellitus, type II, are granted. See 38 C.F.R. § 3.309(e).

Bone Cancer

As to the Veteran's bone cancer claim, the evidence indicates that he had findings suggestive of active bony metastatic disease of the left ischium in 2017. No further findings confirming this diagnosis are of record. The Board notes that section 3.317 includes one type of bone cancer on the list of diseases presumptively due to exposure to herbicide agents, specifically multiple myeloma. By contrast, the Veteran's diagnosed metastatic bone disease or bone metastases are not included on the list of diseases that are presumptively service-connected, and the above evidence fails to document a diagnosis of multiple myeloma, soft-tissue sarcoma, or other disease listed in 38 C.F.R. § 3.309(e). The Board has considered whether the Veteran's bony metastatic disease was equivalent to multiple myeloma, but the medical evidence does not contain documentation of a diagnosis of multiple myeloma or other cancer for which presumptive service connection is available under 38 C.F.R. § 3.309(e). The Board also notes that in rare circumstances malignant fibrous histiocytoma could involve the bone, but that this cancer is listed only under soft tissue sarcoma for purposes of the provisions of 38 C.F.R. § 3.317. In any case, as the evidence does not suggest a diagnosis of malignant fibrous histiocytoma, a grant of service connection on a presumptive basis due to such disability is not warranted. As such, although exposure to Agent Orange has been presumed, presumptive service connection for exposure to herbicide agents is not warranted because the Veteran's active bony metastatic disease of the left ischium is not among the presumptively service-connected diseases.

However, when a veteran is found not to be entitled to a regulatory presumption of service connection for a given disability, the claim must nevertheless be reviewed to determine whether service connection can be established on another basis. See *Combee v. Brown*, 34 F.3d 1039, 1043-44 (Fed. Cir. 1994). For service connection to be granted on a direct basis, there must be evidence that links the Veteran's active bony metastatic disease of the left ischium to an in-service occurrence of an injury or disease, and competent evidence of a nexus between the current disability and the in-service disease or injury. A review of Veteran's service treatment file does not reveal a diagnosis or treatment for any bone cancer or tumor-related issues in service. The Veteran does not contend otherwise. Additionally, there is nothing in the Veteran's post-service treatment records that reflects that he was diagnosed as having bone cancer within one year of service.

The only evidence suggesting a link to service is the Veteran's own statements that the bone cancer was caused by exposure to Agent Orange. The Board does not doubt the Veteran is sincere in his belief that the bone cancer was caused by Agent Orange exposure during service. Although the Veteran may certainly describe his symptoms, he does not have the medical training necessary to render an opinion as to the origin and/or type(s) of the Veteran's bone cancer. See *Jandreau v. Nicholson*, 492 F.3d 1372, 1377 n.4 (Fed. Cir. 2007) ("Sometimes the layperson will be competent to identify the condition where the condition is simple, for example a broken leg, and sometimes not, for example, a form of cancer."). As

such, the Board finds no probative value in the Veteran's statements with regard to establishing service connection for bone cancer on a direct basis.

There is no lay or medical evidence suggesting that the metastatic bone cancer metastasized from the prostate cancer or otherwise was caused or aggravated by the now service-connected prostate cancer or other service-connected disability. Cf. 38 C.F.R. § 3.310.

In light of the foregoing, the claim for entitlement to service connection for bone cancer must be denied. See 38 U.S.C. § 5107; see generally *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990); *Ortiz v. Principi*, 274 F.3d 1361 (Fed Cir. 2001).

Hyperlipidemia

The Veteran also seeks service connection for hyperlipidemia. He contends that the condition is the result of the Veteran's active service.

After carefully considering the record on appeal, the Board finds that the evidence of record persuasively weighs against the claim for entitlement to service connection for hyperlipidemia.

The Board does not dispute that the Veteran has been diagnosed with hyperlipidemia. However, hyperlipidemia and/or elevated cholesterol are not recognized as disabilities for VA compensation purposes. See 38 U.S.C. §§ 101(16), 105(a), 1110; 38 C.F.R. § 3.303(c); see also 61 Fed. Reg. 20,440, 20,445 (May 7, 1996) (diagnoses of hyperlipidemia, elevated triglycerides, and elevated cholesterol are actually laboratory results and are not, in and of themselves, disabilities). The term "disability" as used for VA purposes refers to impairment of earning capacity. See *Saunders v Wilkie*, 886 F.3d 1356 (2018); *Allen v. Brown*, 7 Vet. App. 439, 448 (1995). Notably, in this case, no disability manifested by hyperlipidemia has been demonstrated or alleged.

Congress specifically limits entitlement for service-connected disease or injury to cases where such incidents have resulted in disability. Thus, in the absence of proof of a present disability upon which to predicate an award of service connection, there can be no valid claim.

Accordingly, the claim for service connection for hyperlipidemia must be denied. In reaching this conclusion, the Board has considered the applicability of the benefit-of-the-doubt doctrine. However, as no evidence supports the fundamental requirement of current disability in connection with this claim, that doctrine is not applicable. See 38. § 5107(b); 38 C.F.R. § 3.102.

PAULA B. McCARRON

Veterans Law Judge

Board of Veterans' Appeals

Attorney for the Board C. J. Houbeck, 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.