Citation Nr: 23002686
Decision Date: 01/17/23 Archive Date: 01/17/23

DOCKET NO. 18-49 091
DATE: January 17, 2023

ORDER

Entitlement to service connection for a thoracolumbar spine disability is denied.

Entitlement to service connection for hypertension due to military environmental exposure 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 cancer of the left tonsil, to include as due to military environmental exposure is denied.

Entitlement to service connection for chronic obstructive pulmonary disease (COPD) is denied.

REMANDED

Entitlement to service-connection for a lung disorder other than COPD, to include benign lung nodules is remanded.

FINDINGS OF FACT

1. Degenerative arthritis of the thoracolumbar spine did not have onset in service or within a year of separation, and the currently diagnosed thoracolumbar spine disorders are not otherwise etiologically related to the Veteran's period of service.

2. The Veteran was exposed to herbicides in service and has a current diagnosis of hypertension.

3. Cancer of the left tonsil is not due to any military environmental exposure and is not otherwise related to the Veteran's period of service.

4. The Veteran's COPD is not due to any military environmental exposure, but is rather due to tobacco use.

CONCLUSIONS OF LAW

1. The criteria for service connection for a thoracolumbar spine disability have not been met. 38 U.S.C. §§ 1110, 1112, 1113, 1131, 1137, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.

2. The criteria for entitlement to service connection for hypertension due to military environmental exposure are met. 38 U.S.C. §§ 1110, 1116 (as amended by Sections 202 and 403 of the PACT Act, Pub. L. 117-168 (August 10, 2022)); 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.

3. The criteria for service connection for cancer of the left tonsil, to include as due to military environmental exposure, have not been met. 38 U.S.C. §§ 1110, 1116; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.

4. The criteria for entitlement to service connection for COPD, to include as due to military environmental exposure, have not been met. 38 U.S.C. §§ 1110, 1116, 38 C.F.R. §§ 3.102, 3.300(a), 3.303, 3.307, 3.309.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served honorably on active duty in the United States Army from December 1966 to February 1969. This matter comes to the Board of Veterans' Appeals (Board) on appeal from October 2016 and May 2017 rating decisions of a Department of Veterans Affairs (VA) Agency

of Original Jurisdiction (AOJ).

The Veteran testified at a Board hearing in February 2022 and a transcript of the proceeding is of record.

The Veteran's attorney submitted a Freedom of Information Act or Privacy Act Request (FOIA)/(PA) for the Veteran's claims file in October 2022. The Board considers this request duplicative, as the Veteran's attorney already has access to the Veteran's entire electronic claims file, including the requested records, via the Veterans Benefits Management System (VBMS). VA is responding to the attorney's request, but the Board may proceed with adjudication of the claim as the Veteran's attorney has access to all evidence in the claims file. See November 2020 VA notification letter (titled "other" in the claims file.).

Service Connection

Service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C. §§ 1110, 1131 (2012); 38 C.F.R. § 3.303(a). 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 - the so-called "nexus" requirement. Holton v. Shinseki, 557 F.3d 1362, 1366 (Fed. Cir. 2009) (quoting Shedden v. Principi, 381 F.3d 1163, 1167 (Fed. Cir. 2004)). Service connection may be granted for any disease initially 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).

In addition, service connection for certain chronic diseases, including degenerative arthritis, may be established on a presumptive basis by showing that the condition manifested to a degree of 10 percent or more within one year from the date of separation from service. 38 U.S.C. §§ 1101, 1112, 1113, 1131, 1137 (2012); 38 C.F.R. §§ 3.307, 3.309(a); Fountain v. McDonald, 27 Vet. App. 258, 271-72 (2015). Although the disease need not be diagnosed within the presumptive period, it must be shown, by acceptable lay or medical evidence, that there were characteristic manifestations of the disease to the required degree during that time. 38 U.S.C. §§ 1101, 1112, 1113; 38 C.F.R. §§ 3.307, 3.309(a).

Additionally, for certain chronic diseases with potential onset during service, there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time. If chronicity in service is not established, a showing of continuity of symptoms after discharge may support the claim. 38 C.F.R. §§ 3.303(b), 3.309; Walker v. Shinseki, 708 F.3d 1331 (Fed. Cir. 2013).

A Veteran who served in the Republic of Vietnam during the Vietnam era is presumed to have been exposed during to an herbicide agent, unless there is affirmative evidence to the contrary. 38 C.F.R. § 3.307(a)(6)(iii). For veterans presumed to have been exposed to herbicides, certain enumerated diseases shall be service connected even though there is no record of such disease during service, so long as the requirements of 38 U.S.C. § 1116 and 38 C.F.R. § 3.307(a)(6)(iii) are met, and the rebuttable presumption provisions of 38 U.S.C. § 1113 and 38 C.F.R. § 3.307(d) are also satisfied. 38 C.F.R. § 3.309(e). The enumerated diseases which are deemed to be associated with herbicide exposure include AL amyloidosis, chloracne or other acneform disease consistent with chloracne; type 2 diabetes; Hodgkin's disease; ischemic heart disease, all chronic B-cell leukemias; multiple myeloma; Non-Hodgkin's lymphoma; Parkinson's disease, early onset peripheral neuropathy; porphyria cutanea tarda; prostate cancer; respiratory cancers (cancer of the lung, bronchus, larynx, or trachea); and soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma). 38 C.F.R. § 3.309(e).

In accordance with the PACT Act, hypertension is now a disease presumptively associated with herbicide agents.

Service connection may also be granted on a secondary basis for disability which is proximately due to or the result of service-connected disease or injury, or for additional disability resulting from the aggravation of a nonservice-connected disability by a service-connected disability. 38 C.F.R. § 3.310 (2018); Allen v. Brown, 7 Vet. App. 439, 448 (1995) (en banc).

1. Entitlement to service connection for a thoracolumbar spine disability is denied.

The Veteran alleges that a back disorder began during service and has existed since that time and is related to service.

The evidence shows a current disability during the appeal period. See Holton, 557 F.3d at 1366; 38 C.F.R. § 3.303(d). The Veteran is currently diagnosed with multilevel degenerative changes of the thoracolumbar spine, including lumbar spine degenerative joint and disc disease. See March 2014 and September 2016 VA imaging studies; see August 2022 VA examination report. For the purposes of this decision those diagnoses will collectively be referred to as the thoracolumbar spine disability.

Second, resolving any reasonable doubt in the Veteran's favor, there was an in-service back injury. See Holton, 557 F.3d at 1366; 38 C.F.R. § 3.303(d). In September 2005, the Veteran wrote that he had muscle spasms and cramps of the back due to Agent Orange. At a September 2016 VA appointment, the Veteran reported a history of low back pain since 1969 that became worse after a 2013 motor vehicle accident. He related his initial low back pain to carrying crates in service, but he also reported injuring his low back several times but never receiving treatment. At the Board hearing, the Veteran testified that he fell approximately 10 feet off a pole and laid on the ground for about 10 minutes. After, he was able to get up and finish his job. He reported he did not seek treatment at the time because there was an incoming airstrike and he had to run to the bunker. Afterwards, he described continuous complaints regarding his back, and that he saw a chiropractor for 3 months after service.

The Veteran's service treatment records (STRs) are silent for any back diagnoses or complaints. On the February 1968 report of medical history at separation, the Veteran specifically denied back trouble of any kind. The Veteran's STRs for his entire period of service were provided to VA, but those records do not include a separation examination. See December 2001 Request for Information with January 2002 response. The Veteran's military personal records show he worked as a field wireman during his period of deployment, and a fall from a telephone pole would be consistent with that type of work. It is also likely the Veteran carried heavy crates as he described. Resolving any reasonable doubt in the Veteran's favor, the Veteran had a fall from a pole and carried heavy crates. To the extent the Veteran reports constant or chronic back pain in service, his later testimony is inconsistent with his denial of any back trouble on the report of medical history at separation.

The evidence of record does not support a finding that the current back disorder is related to active service, to include the reported fall and carrying heavy crates.

The earliest available treatment records show that in February 2001, the Veteran reported a 1-year history of back pain with activity, and that he worked in construction. The Veteran continued to report back pain in October 2001, and the assessment was degenerative joint disease and sciatica. At an April 2002 appointment, the Veteran reported that he had intermittent back pain for the past 30 years, which would be around 1972. Another April 2002 record also reports the Veteran's post service career was entirely in carpentry and construction. A January 2007 VA treatment note reports the Veteran had left sided back pain, and that he was doing heavy lifting as a remodeler. August 2011 VA treatment notes report back pain after an injury at work and December 2015 treatment notes report back pain for a week after a heavy lift.

The Veteran underwent a VA examination in August 2022. That examiner documented that degenerative joint and disc disease of the lumbar spine had been present since 2001, as well as the lay testimony of the in-service injury and symptoms since separation. At the examination, the Veteran again reported that his back problems began in service after he fell from a telephone pole. He denied treatment for back problems in service, but reported he began to see a chiropractor after separation.

The examiner opined that the diagnosed conditions were not etiologically related to service. In support of that opinion, the examiner noted the Veteran's history of degenerative joint and disc disease dated from 2001, when he was over 50 years of age. The examiner explained that those were degenerative processes due to aging. Although the acute trauma and injury described by the Veteran could result in disc herniation and possibly vertebral fractures, instead the Veteran had diffuse degenerative spine and disc changes. Thus, the examiner

reasoned that the reported injury did not account for the current findings. The examiner further noted that the STRs were silent for any complaints of back pain during active duty service.

The examiner also opined that symptoms of arthritis did not first manifest in service, or within a year of separation. In support of that opinion the examiner stated that the symptoms of back pain could overlap with other conditions of both spinal and non-spinal origin, such as strain, kidney conditions, or vascular disease. The examiner again noted the STRs showed no evidence of back pain in service, nor was there medical evidence of back pain in the year after separation from service. Even so, given the Veteran's age at the time of separation, any symptoms of back pain would be less likely due to arthritic disease than other potential etiologies. The examiner specifically stated they considered the lay testimony of an in-service fall, chronic intermittent back pain, and the reports of chiropractic care in 1969.

The 2022 VA examiner's opinion is adequate because the examiner addressed the relevant medical evidence and the lay testimony. The examiner also provided clear rationales to support their conclusions. The 2022 opinion weighs heavily against the claim.

At the August 2020 hearing, the Veteran's representative proffered that the low back pain and diagnoses could also be related to strenuous activity and heavy lifting common to military personnel, and mentioned they would provide medical articles supporting that proposition at a later time. Those articles have not been received by VA. The Veteran and his representative are lay persons and have not demonstrated the requisite medical training or expertise required to opine on the etiology of the Veteran's current back pain. Although the representative is competent to report what another medical professional has said, those articles are not of record. Further, the VA treatment records show the Veteran had a long, post-service career in various roles in the construction field that involved heavy lifting. See e.g. December 2015 VA treatment note. Overall, the lay testimony of record is not competent to establish a nexus between any strenuous physical activity in service and the Veteran's current lumbar spine disorder.

In sum, the evidence of record weighs heavily against a finding that the currently diagnosed thoracolumbar spine disorders are related to the Veteran's period of service.

Additionally, the weight of the evidence is against a finding that degenerative arthritis of the thoracolumbar spine manifested in service or within a year of separation. The 2022 examiner adequately explained why degenerative arthritis did not manifest in service or within a year of separation. There are no objective medical records showing treatment for or a diagnosis of arthritis in the year following separation. The Veteran's reports regarding chronic back pain since the in-service onset have been inconsistent. He denied back trouble at separation, he reported a 1-year history of back pain in February 2001, and a 30-year history of intermittent low back pain in April 2002. There are also no medical records prior to 2001 to support a finding of a chronic back condition. Overall, the lay testimony of chronic back pain since service is not consistent or supported by the objective evidence. As a result, the lay testimony is not deemed credible in this regard.

Accordingly, service connection for the thoracolumbar spine disability is denied on a direct and presumptive basis. As the evidence of record persuasively weighs against the claim, the benefit-of-the-doubt rule does not apply. 38 U.S.C. § 5107(b); 38 C.F.R. §§ 4.3, 4.7; Lynch v. McDonough, 21 F.4th 776 (Fed. Cir. 2021).

2. Entitlement to service connection for hypertension, to include as due to military environmental exposure or secondary to service-connected coronary artery disease, is granted pursuant to the PACT Act.

Here, exposure to herbicide agents has already been conceded. See November 2021 VA Memo. The Veteran has a current diagnosis of hypertension, as documented by September 2019 VA treatment records. In accordance with the PACT Act, hypertension is now a disease presumptively associated with herbicide agents. Thus, service connection for hypertension is warranted under the PACT Act.

The Board has considered whether service connection for hypertension is warranted under any theory of entitlement other than the PACT Act. However, in this case the record does not indicate, and the Veteran has not argued that hypertension had its onset during service.

There is no competent medical evidence of record indicating that the Veteran's hypertension is directly related to any in-service illness or injury, to include in-service herbicide exposure. VA obtained a medical examination and opinion in August 2022. That examiner opined that hypertension was not directly related to service, to include any herbicide exposure. In support of that opinion, the examiner explained that the STRs did not show hypertension in service, and that the first post-service evidence of hypertension was 30 years after separation from service. The examiner noted that when hypertension was diagnosed, the Veteran was over 50, had a body mass index of 31.6, and had a positive family history of hypertensionwhich were all established risk factors for the development of hypertension and the most likely cause of this Veteran's hypertension. The examiner further stated that there was no established causal relationship between hypertension and Agent Orange, and in the Veteran's case his age, obesity, and family history were the most likely cause and far outweighed any potential effect from his exposure to Agent Orange. Specifically regarding the most recent National Academy Of Sciences (NAS) report from 2018 regarding hypertension and herbicide exposure, the examiner explained that while there was sufficient evidence of an association, the data was still inconclusive when it came to establishing causality. The examiner went on to discuss that the study's findings were based on veterans of the Army Chemical Corps specifically. The examiner went on to state that review of other, current medical literature did not show an association between herbicide exposure and the development of hypertension.

While the Veteran believes his hypertension is related to in-service herbicide exposure, as a layperson, the Veteran is not shown to have the relevant training or education to offer a medical opinion relating his hypertension to herbicide exposure, or to service generally. The etiology of hypertension is medically complex as it has multiple possible etiologies. Jandreau v. Nicholson, 492 F.3d 1372, 1377, 1377 n.4 (Fed. Cir. 2007).

The weight of the evidence is also against a finding that hypertension is secondary to service-connected coronary artery disease. The August 2022 examiner also opined that hypertension was not caused or aggravated by coronary artery disease. In support of that opinion, the examiner explained that the Veteran's coronary artery disease had not been clinically substantiated, and the medical records did not demonstrate a progression or worsening of hypertension beyond the natural history of the condition. The examiner explained that the radiographic evidence of coronary artery disease from 2017 and 2018 did not affirm a clinical diagnosis of coronary artery disease or ischemic heart disease. Rather, the gold standard for diagnosis of that condition was coronary catheterization/angiography or a diagnostic stress test. In the absence of those studies, the Veteran's noted coronary calcifications did not support the presence of associated inadequate blood supply that defines ischemic heart disorder. Further, the examiner explained that the Veteran's hypertension preceded the findings of coronary calcifications by 15 years, so there could be no causal relationship.

The August 2022 VA examiner fully reviewed the medical evidence, lay testimony, and the NAS report identified in the prior Remand directives. The opinions are adequate, comply with the prior Remand directives, and weigh heavily against the claim. There is thus no competent evidence linking hypertension to in-service herbicide exposure, or to the service-connected coronary artery disease. Accordingly, at this time, no theory of entitlement allows for a grant of service connection for hypertension other than the PACT Act.

3. Entitlement to service connection for cancer of the left tonsil, to include as due to military environmental exposure is denied.

The Veteran seeks service connection for left tonsil cancer. The Veteran has been diagnosed with squamous cell carcinoma of the left tonsil and he was exposed to Agent Orange in service. See April 2017 VA treatment record. The remaining question before the Board is whether there is a nexus between the diagnosed condition and the in-service exposure.

The Veteran asserts that left tonsil cancer is due to exposure to Agent Orange. At the Board hearing, the Veteran's representative at the time stated there was a 2012 medical study that suggested there was a possibility that Veteran's exposed to Agent Orange were more susceptible to develop squamous cell carcinoma. Neither the Veteran nor the representative otherwise submitted a medical article of medical opinion liking squamous cell carcinoma to Agent Orange.

VA obtained a medical examination in August 2022. That examiner documented the Veteran had

been diagnosed with squamous cell carcinoma of the left tonsil in 2017 and that he had been exposed to Agent Orange in service. The examiner went on to opine that the left tonsil cancer was not etiologically related to the Veteran's period of service, to include any military environmental exposure. In support of that opinion, the examiner explained that use of tobacco and alcohol were historically the principal risk factors for the development of oropharyngeal squamous cell carcinomas such as the Veteran's left tonsil cancer. Another growing risk factor was human papillomavirus. Further, there was a 5- to 25-fold increased risk of head and neck cancer in heavy cigarette smokers compared with nonsmokers, and alcohol consumption further significantly increased the risk of cancer in the upper aerodigestive tract. The examiner reasoned that the Veteran's documented history of alcohol use and longstanding/ongoing tobacco use were the known risk factors for the development his left tonsil cancer. In contrast, the examiner explained that in 2018 the NAS Institute of Medicine found there was inadequate or insufficient evidence of an association between Agent Orange exposure and the development of oropharyngeal squamous cell carcinomas such as the Veteran's left tonsil cancer.

The examiner's findings are consistent with other medical evidence. September 2016 VA treatment notes document the Veteran had a smoking history since 1967. November 2016 VA treatment notes state the Veteran was smoking 1 pack per day, down from 3 packs per day. February 2022 VA treatment notes report the Veteran was still smoking. A February 2015 VA examination report documents the Veteran had a history of alcohol use disorder that was in remission.

The examiner provided the opinions requested by the prior Remand and provided a well-reasoned rationale based on an accurate reporting of the evidence. The examiner's conclusion considered the relevant evidence and lay testimony. That opinion is adequate and weighs heavily against the claim.

There is no medical opinion or other medical evidence in the file linking the left tonsil cancer to the Veteran's period of service or any military environmental exposure. Although the Veteran has expressed his opinion that his left tonsil cancer was related to service, as a lay person he does not have the medical expertise necessary to provide such an opinion of complex etiology.

In sum, the weight of the competent medical evidence is against a finding that the Veteran's diagnosed left tonsil cancer is etiologically related to his period of service, to include any military environmental exposure. As the evidence of record persuasively weighs against the claim, the benefit-of-the-doubt rule does not apply. 38 U.S.C. § 5107(b); 38 C.F.R. §§ 4.3, 4.7; Lynch v. McDonough, 21 F.4th 776 (Fed. Cir. 2021).

4. Entitlement to service connection for COPD, to include as due to military environmental exposure is denied.

The Veteran asserts that COPD is etiologically related to service, to include in-service smoking and exposure to Agent Orange. COPD has been diagnosed during the appeal period and the Veteran was exposed to Agent Orange in service. See e.g. August 2022 VA examination report. The remaining question is whether COPD is etiologically related to the Veteran's period of service, to include any military environmental exposure.

At the outset, the claim for service connection for COPD due to tobacco use is prohibited by law. For claims received by VA after June 9, 1998, as is the case here, a disability that results from injury or disease attributable to a veteran's use of tobacco products during service will not be considered service-connected. See 38 C.F.R. § 3.300(a). Thus, COPD cannot be granted as directly related to the in-service tobacco use.

Alternatively, the Veteran asserts that COPD is due to tobacco abuse, and that tobacco abuse is secondary to his service-connected posttraumatic stress disorder (PTSD). He explains that he began smoking during his deployment to Vietnam to cope with the stress, and that he continued to smoke/use tobacco to cope with chronic stress related to PTSD. Essentially, his contention is that tobacco abuse is an intermediate step between PTSD and the development of COPD. Precedent has established that obesity may serve as an intermediate step between a service-connected disability and a current disability for purposes of secondary service connection. Walsh v. Wilkie, 32 Vet. App. 300, 306-07 (2020); Marcelino v. Shulkin, 29 Vet. App. 155 (2018); VAOPGCPREC 1-2017 (obesity may be an intermediate step in a service connection claim). Unlike obesity, however, smoking/tobacco abuse has not been expressly

recognized by VA or the U.S. Court of Appeals for Veterans Claims as an "intermediate step" in determining whether secondary service connection is warranted. Because there is no precedent or law creating an exception to the prohibition on service connection for a disability related to use of tobacco products, the claim must be denied under that theory of entitlement. 38 C.F.R. § 3.300 (a).

VA obtained a medical examination and opinion in August 2022. That examiner opined that the diagnosed COPD was not related to the Veteran's period of service, to include Agent Orange. In support of that opinion, the examiner reported the STRs were silent for a chronic or recurrent lung or respiratory condition during active duty. The examiner went on to explain there was no direct or causal association between herbicides or Agent Orange and the development of COPD based on review of medical literature. Also, the most predominant risk factor for the development of COPD was tobacco use. The examiner concluded that the Veteran's prolonged tobacco use was the likely etiology of his COPD.

The examiner provided the opinions requested by the prior Remand and provided a well-reasoned rationale based on an accurate reporting of the evidence. The examiner's conclusion considered the relevant evidence and lay testimony. That opinion is adequate and weighs heavily against the claim.

There is no other medical opinion to the contrary. VA treatment records dated November 2015 show a clinical impression of reactive airway disease due to cigarette smoking. November 2016 VA treatment notes report that 80 to 90 percent of COPD was caused by cigarette smoking. Other causes included occupational exposure, which accounted for 10 to 20 percent of COPD, passive exposure to tobacco smoke or environmental smoke, indoor air pollution such as heating due to wood or coal, occupational dusts and chemicals (fumes, vapors, and irritants), or a genetic disorder. The VA treatment records are consistent with the VA examiner's conclusion that COPD was likely due to the Veteran's long-term tobacco use.

Although the Veteran has expressed a belief that COPD may be due to Agent Orange, he lacks the medical expertise necessary to competently opine on a complex etiology opinion.

In sum, the competent evidence weighs heavily against a finding that COPD is etiologically related to service, to include military environmental exposure and service connection is denied. As the evidence of record persuasively weighs against the claim, the benefit-of-the-doubt rule does not apply. 38 U.S.C. § 5107(b); 38 C.F.R. §§ 4.3, 4.7; Lynch v. McDonough, 21 F.4th 776 (Fed. Cir. 2021).

REASONS FOR REMAND

5. Entitlement to service-connection for a lung disorder other than COPD, to include benign lung nodules is remanded.

This issue is remanded to secure an adequate opinion regarding whether lung nodules are etiologically related to military environmental exposure, specifically Agent Orange.

VA obtained a medical examination and opinion in August 2022. That examiner opined that the diagnosed nonspecific lung nodules, first noted in 2017, were not due to military service or environmental exposure. In support of that opinion, the examiner stated that the Veteran did not have a lung disorder documented during service that would or could have contributed to the nonspecific lung nodules. The examiner also stated the Veteran's lung nodules were not lung cancer, so they were not presumptively related to Agent Orange. The examiner failed to address whether lung nodules could otherwise be directly related to Agent Orange. Thus, remand for an addendum opinion is required.

February 2021 VA treatment records do show that there is concern the lung nodule could be a slow growing malignancy, but a July 2022 VA CT scan showed no current evidence of pulmonary malignancy. November 2020 VA treatment notes document that a biopsy of the nodule did not show malignancy, but rather necroinflammatory debris. Because lung cancer has not yet been diagnosed, presumptive service connection for lung cancer due to Agent Orange exposure is not warranted at this time.

The matters are REMANDED for the following action:

1. Obtain an addendum opinion regarding the etiology of the nonspecific lung nodules from a

VA examiner. The entire claims file must be made available to and be reviewed by the examiner. If an examination is deemed necessary, it shall be provided. An explanation for all opinions expressed must be provided.

(Continued on the next page)

The examiner must provide an opinion regarding whether the diagnosed nonspecific lung nodules are etiologically related to Agent Orange despite not being one of the diseases presumptively associated with that exposure. Why or why not?

LAURA E. COLLINS

Veterans Law Judge

Board of Veterans' Appeals

Attorney for the Board C. Smith, Counsel