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#### ORDER

Entitlement to service connection for head cancer is denied.

Entitlement to service connection for neck cancer is denied.

Entitlement to service connection for diabetes mellitus type 2 is denied.

Entitlement to service connection for peripheral neuropathy is denied.

#### REMANDED

Entitlement to service connection for a kidney disorder is remanded.

#### FINDINGS OF FACT

1. The Veteran has not been diagnosed with cancer in the head as a current disorder, and there are no residuals of salivary gland tumor surgery and radiation therapy that occurred in 2012.
2. The Veteran has not been diagnosed with cancer in the neck as a current disorder, and there are no residuals of salivary gland tumor surgery and radiation therapy that occurred in 2012.
3. The Veteran's diabetes mellitus type 2 did not manifest during service or to a compensable degree within one year of service separation; there was no continuity of symptomatology from service or the year following service; and the disorder is not otherwise etiologically related to an in-service injury or disease, to include any toxic exposure.
4. The Veteran's peripheral neuropathy is caused by her diabetes mellitus type 2, which is not service connected; the disorder was not incurred during service and is not otherwise related to a disease or injury of service.

#### CONCLUSIONS OF LAW

1. The criteria of entitlement to service connection for head cancer are not met. 38 U.S.C. §§ 1101, 1110; 38 C.F.R. § 3.303.
2. The criteria of entitlement to service connection for neck cancer are not met. 38 U.S.C. §§ 1101, 1110; 38 C.F.R. § 3.303.
3. The criteria of entitlement to service connection for diabetes mellitus type 2 are not met. 38 U.S.C. §§ 1101, 1110, 1112, 1116; 38 C.F.R. §§ 3.303, 307, 309.
4. The criteria of entitlement to service connection for peripheral neuropathy are not met. 38 U.S.C. §§ 1101, 1110, 1112, 1115; 38 C.F.R. § 3.303, 3.307, 3.309, 3.310.

#### REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The veteran served on active duty from June 1972 to September 1979.

This case comes before the Board of Veterans' Appeals (Board) on appeal from a June 2017 rating decision. The Board remanded this matter in April 2019.

The Veteran is not currently service-connected for any disability.

Service Connection

Service connection will be granted for a current disability that resulted from an injury or disease incurred in or aggravated during active military service. 38 U.S.C. §§ 1110, 1131; 38 C.F.R. § 3.303(a). Establishing service connection generally requires (1) a current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a nexus between the claimed in-service disease or injury and the present disability. See *Shedden v. Principi*, 381 F. 3d 1163, 1167 (Fed. Cir. 2004).

Service connection may be presumed for certain diseases, including diabetes mellitus, organic diseases of the nervous system, and nephritis, if the chronic disease is shown as such during service or within a presumptive period following service. 38 U.S.C. §§ 1101, 1112, 1113; 38 C.F.R. §§ 3.303(b), 3.307, 3.309. For the listed chronic conditions, service connection may also be established by a continuity of symptomatology. 38 C.F.R. § 3.303(b).

A veteran who, during active military, naval, or air service, served in the Republic of Vietnam between January 9, 1962, and May 7, 1975, is presumed to have been exposed to an herbicide agent, unless there is affirmative evidence to the contrary. 38 C.F.R. § 3.307. Furthermore, if a veteran was exposed to an herbicide agent during active military, naval, or air service, certain diseases are presumed to be service connected if the requirements of 38 C.F.R. § 3.307(a)(6) are met, even though there is no record of the disease during service. 38 U.S.C. § 1116(a); 38 C.F.R. § 3.309(e). VA has also conceded herbicide exposure for veterans who served in units that operated in or near the Korean demilitarized zone (DMZ) between April 1, 1968, and August 31, 1971. 38 C.F.R. § 3.307 (a)(6)(iv).

Service connection may be granted on a secondary basis for disability which is proximately due to, or the result of, a service-connected disease or injury. Any increase in severity of a non-service-connected disease or injury that is proximately due to, or the result of, a service-connected disease or injury, and not due to the natural progress of the non-service-connected disease, will be service-connected. 38 C.F.R. § 3.310; see also *Wallin v. West*, 11 Vet. App. 509, 512 (1998).

The scope of a disability claim includes any disability that may reasonably be encompassed by the claimant's description of the claim, reported symptoms, and the other information of record. See *Clemons v. Shinseki*, 23 Vet. App. 1 (2009). The claimant will be given the benefit of the doubt as to any issue material to the determination of a matter when there is an approximate balance of positive and negative evidence. 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102. Regardless of legal presumptions relating to service connection, service connection may be established by adequate evidence of actual causation. See *Combee v. Brown*, 34 F.3d 1039, 1042 (Fed. Cir. 1994).

The Board must review the entire record but need not discuss each piece of evidence. See *Gonzales v. West*, 218 F.3d 1378 (Fed. Cir. 2000). Reasons must be given for rejecting any evidence favorable to the claimant. See *Timberlake v. Gober*, 14 Vet. App. 122 (2000).

1. Service connection for head cancer.
2. Service connection for neck cancer.

In January 2017, the Veteran filed a claim seeking service connection for head and neck cancer, alleging that the disorders are due to exposure to chemicals and herbicide agents while stationed at Fort McClellan, Alabama for basic training. A rating decision of June 2017 denied service connection for head cancer and for neck cancer. A notice of disagreement (NOD) and VA Form 9 were filed by the Veteran in July 2017 and January 2018, respectively.

No cancer symptoms are noted in the service treatment records. The separation examination report of August 1979 found the Veteran to be normal with respect to the head, face, neck, and scalp. The Veteran does not allege an in-service onset of cancer.

Treatment records of Dr. B. P., dated March 2017, note the following diagnoses and dates: neoplasm UPB larynx and neoplasm UB oral cavity pharynx (December 2011); neoplasm, malignant, salivary gland NOS (February 2012); and mucositis due to radiation therapy (July 2012). Private treatment records of Dr. K. W. document that cancer was removed from the palate of the Veteran's mouth in February 2012. The oral cancer was characterized as low-grade palatal gland polymorphous cancer. A December 2013 record of Dr. M. A. found no clinical evidence of local or distant recurrent disease following salivary gland tumor

surgery and radiation therapy in 2012. A September 2016 treatment record of Dr. B. P. notes that an MRI of October 2015 was negative for head/neck neoplasm.

In February 2023, the Veteran underwent a VA examination for neck (cervical spine) conditions. It was determined that she does not have a current diagnosis of neck cancer or head cancer. The relevant medical history was salivary gland cancer in 2012 that required radiation. There were currently no residual neck problems and no neck involvement. The examination report made no current cancer diagnosis. The only diagnosis was the salivary gland cancer in 2012 with no current residuals.

In March 2023, the Veteran underwent a VA examination for oral and dental conditions. The report noted a 2012 diagnosis of status post polymorphous carcinoma surgical removal, in remission. The condition had resolved following the surgery and radiation therapy. The Veteran had a history of salivary gland cancer but no current cancer disorder.

The Veteran, as a layperson, is competent to report symptoms as they are experienced through the senses. See *Layno v. Brown*, 6 Vet. App. 465, 470 (1994). She is not competent to diagnose cancer. See *Kahana v. Shinseki*, 24 Vet. App. 428 (2011). The requirement of a current disability is satisfied if a disorder is diagnosed at the time a claim is filed or at any time during the pendency of the appeal. See *McClain v. Nicholson*, 21 Vet. App. 319, 321 (2007).

In the Veteran's case, there is no competent evidence of head or neck cancer as a current disorder. Service connection presupposes a current disability. 38 U.S.C. §§ 1110; 38 C.F.R. § 3.303; see also *Degmetich v. Brown*, 104 F. 3d 1328 (1997). The weight of the evidence, which is not in approximate balance, is against finding that the Veteran has had cancer at any time since her service-connection claim was filed in January 2017, or since the filing of an intent to file in December 2016. As a result, the claims must be denied on the basis of the lack of current disorders. Under the circumstances, there is no need to consider other service-connection elements, namely an in-service disease or injury or a nexus between the latter and a current disorder, including alleged exposure to chemical and herbicide agents while at Fort McClellan, Alabama.

3. Service connection for diabetes mellitus type 2.

4. Service connection for peripheral neuropathy.

The Veteran alleges in her claim and elsewhere in the record that she was exposed to toxic substances while stationed at Fort McClellan, Alabama, including herbicide agents, polychlorinated biphenyls (PCBs), chemical warfare agents, trichloroethylene (TCE), tetrachloroethylene (PCE), and radioactive isotopes, and that, based on this exposure, she is entitled to service connection for diabetes mellitus type 2 and associated diabetic peripheral neuropathy.

In February 2023, diabetes mellitus type 2 and diabetic peripheral neuropathy were diagnosed by VA examination. The noted onset year of diabetic peripheral neuropathy was 2015. No onset date was given for the Veteran's diabetes. Diabetes is not noted in the service treatment records. For the separation examination report of August 1979, the Veteran has found to be normal with respect to the endocrine system. The laboratory findings were negative for albumin and sugar, and diabetes was not diagnosed.

The Veteran's service personnel records confirm that she was stationed at Fort McClellan from June 1972 to August 1972 for training relating to the Women's Army Corps (WAC). The Veteran's military occupational specialty was clerk typist and administrative specialist. The Veteran did not serve in Vietnam and does not so assert. The Veteran served in Korea from October 1974 to November 1975. There is no evidence, and the Veteran does not contend, that she served in the demilitarized zone (DMZ) of Korea or that she was exposed to herbicides in Korea. Accordingly, service connection based on presumed exposure to an herbicide agent in the Republic of Vietnam or the Korean DMZ is not for consideration in this case.

The Veteran maintains in a statement of July 2017 that, while at Fort McClellan for basic training from June 1972 to August 1972, she was on and off the base at various locations, including the main post, fields and ranges, and Pelham range for firearms training. She recalls daily exercises in fields around the barracks and in nearby woods and streams. She

remembers walking through defoliated vegetation and seeing people with backpacks who sprayed to defoliate around the base. She also swam in creeks and hiked in her free time. The Veteran recalls a weekend in which visited the town of Anniston and ate local fish, fruits, and vegetables. The Veteran is competent to report her experienced symptoms and other facts perceived through the senses, including where she went and what she did while stationed at Fort McClellan. See *Layno v. Brown*, 6 Vet. App. 465, 470 (1994).

The Veteran alleges that the Monsanto Company produced cancer-causing PCBs in Anniston, Alabama, that herbicide agents for which VA grants presumptive service connection status were used at Fort McClellan, that other dangerous pesticides and herbicides were used and spilled at Fort McClellan, and that trichloroethane (TCD) has been found in groundwater near one of the base's landfills.

The Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act), Pub. L. No. 117-168, 136 Stat. 1759 (Aug. 10, 2022), requires that VA conduct an epidemiological study on the health trends of veterans who served at Fort McClellan. The new law does not create a presumption of exposure at Fort McClellan or a presumption for service connection for any Fort McClellan exposure. VA's regulations do not identify Fort McClellan as an exposure area for toxic substances, including herbicide agents.

Under 38 C.F.R. § 3.307(a)(6), an "herbicide agent" is defined as the chemicals 2,4-D, 2,4,5-T and its contaminant TCDD, cacodylic acid, and Picloram. The presumption of service connection based on exposure to an herbicide agent is expressly limited in the regulation, as the Veteran acknowledges, to situations in which the requirements of § 3.307(a)(6) are met. Because the latter section does not refer to any herbicide exposure at Fort McClellan, exposure is not presumed. Despite the lack of an herbicide presumption associated with service at Fort McClellan, service connection may be established upon sufficient evidence of actual causation by an herbicide agent or other toxic exposure. See *Combee v. Brown*, 34 F.3d 1039 (Fed. Cir. 1994).

A VA webpage recognizes that some service members stationed at Ft. McClellan may have been exposed to one or more, low-level hazardous materials, including radioactive compounds (cesium-137 and cobalt-60) and chemical warfare agents (mustard gas and nerve agents) used in decontamination training and testing activities in isolated locations on the base, and PCBs from plant owned by the Monsanto Company in the town of Anniston. The webpage notes that, while high-level exposure to these materials may cause a variety of adverse health effects, there is no evidence of exposures of this magnitude having occurred at Fort McClellan. See <http://www.publichealth.va.gov/exposures/fort-mcclellan/>.

In October 2018, the Veteran submitted report entitled "Likelihood of Exposure to Herbicide Agents Used in the Vietnam War by Veterans who served on Fort McClellan (FTMC) in Anniston, AL" ("Mathers Report"). In the report, Dr. Mathers states that, in her professional opinion as a weed scientist, it is more likely than not and reasonably certain that persons serving or living at Fort McClellan between 1974 and 1978 were exposed to the same herbicide agents used in Vietnam and likely received more exposure to contaminants such as TCDD than those with Vietnam service, especially anyone undergoing any kind of military training conducted outside. Dr. Mathers has concluded that the herbicide agents used at Fort McClellan contained the same agents as those used in Vietnam, namely 2, 4D, 2,4,5-T, and TCDD, Picloram, etc. While limiting her "reasonable degree of certainty finding" to the years 1974 to 1976, she states that the years of service are not specifically limited and may go beyond 1976.

In a section entitled "Fort McClellan Base Chemicals," the Mathers report states that dangerous chemicals were located, used, and spilled at Fort McClellan from 1951 to 1999, when it was the site of the U.S. Army Chemical School, except for a brief period in the 1980s when the school was in Aberdeen, Maryland. The use of 2,4,5-T-based Silvex at Fort McClellan in 1974, 1980, 1989, and 1998 is noted, but these dates follow the period of the Veteran's service at Fort McClellan in 1972. It is also noted that a Fort McClellan forester from 1960 to 1987 has reported that Tordon pesticides were sprayed and dispersed at the base, and that over 1,000 pounds of Tordon were buried in a landfill. No date other than the 27-year range is given for the forester's personal recollection. The Mathers report also refers to the period April 1972 to March 1977 in a section that discusses locations other than Fort McClellan in relation to the history of the development of tactical herbicides.

The Mathers report further refers to Operation Top Hat, in which mustard gas (HD) was dispersed. No dates are given. In addition, there is reference to an area known as Area T-5, which was allegedly used from 1961 to 1973 for sulfur mustard (HD), sarin (GB), and venomous agent (VX). Area T-6 had training exercises using mustard gas, lewisite (L), and GB. The report also states that HD, GB, cyanogen chloride (CK), phosgene oxine (CX), and phosgene (CG) "may" have been used from the 1950s to 1972 at a Detection and Identification area. Moreover, the base allegedly used an area known as T-24A until 1973 for chemical exercises, which included disposal of munitions filled with CG, BZ (an incapacitating agent), GB, and HD. At this area, there were allegedly two burning pits in which chemical warfare agent would be sprayed into a fire in an attempt to destroy it. According to a participant, the report states, the nerve agent GB was used for these exercises. In several other areas, there were reportedly HD burn pits, some of which were used as early as the 1950s, but all of which were closed by 1973. There was allegedly a mustard gas spill in 1961, when leaky containers were transported through the base, dripping mustard on the transport vehicle and the pavement. A non-commissioned officer reported that a 55-gallon drum of mustard gas was buried in a "Toxic Agent Yard."

The Mathers report states that radiological material, including the radioactive isotopes cobalt and cesium, were used at Fort McClellan and that several areas have the "potential" for radiological contamination. It is asserted that many radioactive isotopes "may" have been buried at Pelham Range. No reference is made to 1972 (when the Veteran was at Fort McClellan) or earlier in this section.

In March 2020, VA's Compensation Service reviewed the Department of Defense's (DOD's) listing of locations outside of Vietnam and the Korean DMZ where Agent Orange was used, tested, or stored. DoD has not identified Fort McClellan as a location where Agent Orange was used, tested, or stored. In addition, no evidence associates Agent Orange (developed for combat operations in Vietnam and was used there from 1962 to early 1971) with the US Army Chemical School or the Chemical-Biological-Radiological Agency (CBR) at Fort McClellan. Furthermore, Fort McClellan was not on the Agent Orange shipping supply line running directly from Gulfport, Mississippi to South Vietnam via merchant ships. Routine base maintenance with commercial herbicides, such as range management, brush clearing, and weed killing, falls outside the definition of herbicide agent under 38 C.F.R. § 3.307(a)(6)(i).

The Veteran cites five or more Board decisions involving service-connection appeals in which the Board determined that veterans at Fort McClellan were exposed to an herbicide agent listed under 38 C.F.R. § 3.307(a)(6). Prior Board decisions in other appeals, while non-precedential, may be considered to the extent that they reasonably relate to the case under consideration. 38 C.F.R. § 20.1303; see also *Hillyard v. Derwinski*, 1 Vet. App. 349, 351 (1999). The Board decisions cited by the Veteran are distinguishable in one way or another from the facts of the present case as reflected in the current record. For example, in other cases in which service connection for a disability has been granted based on a Fort McClellan exposure, the claimant may have served at Fort McClellan during a period other than 1972, or there may have been a positive nexus opinion of record. In short, other Board decisions, which are not precedential, were necessarily based upon different records of evidence. The Board must base its decision on the record before it and not those of other appeals that may share some elements of the Veteran's case. For the same reason, the Board will not rely upon prior Board decisions which determined that the claimant was exposed to a commercial herbicide, not an herbicide agent as defined by 38 C.F.R. § 3.307 (a)(6)(i)), when stationed at Fort McClellan, Alabama.

In September 2021, a February 2015 report of the U.S. Department of Health and Human Services, entitled "Health Consultation. Anniston PCB Air Sampling, Anniston PCB Site. Anniston, Calhoun County, Alabama, EPA Facility ID: ALD000400123" was added to the record. The report explains that a health consultation is a verbal or written response from the Agency for Toxic Substances and Disease Registry (ATSDR) or ATSDR's Cooperative Agreement Partners to a specific request for information about health risks related to a specific site, a chemical release, or the presence of hazardous material. The stated conclusion of the 17-page report by ATSDR is that, on the basis of the reviewed data, and on the assumption that a sampling of June 25-27, 2013, represents typical conditions, concentrations of PCBs in the air at the F, I, and J sampling stations were low and are not expected to result in an increased cancer risk or other harmful health effects in persons living in the neighborhoods outside the perimeter of the Monsanto Company facility in Anniston, Alabama that manufactured PCBs between the early 1930s and the early 1970s.

A VA medical opinion was obtained in December 2017 concerning the likelihood that the Veteran's claimed disorders of diabetes mellitus and peripheral neuropathy secondary to diabetes were caused by alleged exposure to contaminants, chemicals, and pesticides while stationed at Fort McClellan, Alabama. In the clinician's opinion, based on a review of the claims folder, the Veteran's disorders are due not to chemical or other exposures at Fort McClellan, but rather to the Veteran's genetic disposition, history of smoking tobacco, and aging. The clinician explained that there would need to be a massive exposure event (not shown in the Veteran's records) to even consider the contention as being at least as likely as other causes. Moreover, the necessary exposure would have to involve a degree of direct contact, such as having the chemicals directly sprayed on or ingested, that is not noted in the Veteran's case. Further explanation was that the Veteran's age group of the late 50s to 60s commonly has these disorders, that the Veteran was a heavy tobacco smoker with a history of 40+ pack years, and that the Veteran's mother had diabetes (familial history).

In December 2022, a response was received from a researcher of the Veteran's Benefits Administration, Office of Field Operations, Military Records Research Centers. A review of an unredacted 2019 DOD Tactical Herbicide Location list failed to verify herbicide exposure of the Veteran while assigned to Company D, Women's Army Corp Training Brigade, US Women's Army Corps Center, Fort McClellan, Alabama from June 28, 1972, to August 24, 1972, as claimed by the Veteran. No evidence documented the claimed exposure incident/event.

A further VA nexus opinion based on records review was obtained in February 2023. In the clinician's opinion, the Veteran's type 2 diabetes and peripheral neuropathy are less likely than not caused by the indicated toxic exposure risk activity(ies), namely unconfirmed, possible exposure to mustard gas in boot camp as a patch or droplet (single) and unconfirmed exposure to PCBs in a town near Fort McClellan, after considering the total, potential exposure through all applicable military deployments of the Veteran and the synergistic, combined effect of all toxic exposure risk activities of the Veteran. The rationale was that the Veteran's diabetes mellitus type 2 is metabolic disease that is very common in the Veteran's age group and is related to heredity and metabolism. The clinician also reasoned that the Veteran's peripheral neuropathy has clear etiologies relating to diabetes, hypertension, and NSAID use, which are not service connected. In the clinician's opinion, the Veteran's current diabetes and diabetic peripheral neuropathy are not related in any way to the claimed exposures. The opinion was based on a review of the current claims folder at the time, which included the Mathers report.

Although VA must afford a claimant the benefit of the doubt when the evidence is in relative equipoise, the claimant has the evidentiary burden of establishing all elements of service connection, at least to the extent of equipoise, including a nexus to service. 38 U.S.C. § 5107(b); see also *Fagan v. Shinseki*, 573 F.3d 1282, 1287 (2009). In this case, the weight of the evidence, which is not in approximate balance, is against finding that the Veteran was actually exposed to an herbicide agent or other toxic substance when at Fort McClellan in 1972, including her visits to Anniston, Alabama, that her diabetes and diabetic peripheral neuropathy is caused by a disease or injury of service, or that the disorders had their onset during service. The Veteran is not competent to associate her current diabetes with the herbicide spraying that she witnessed on the base, to her training exercises, or to her visits to Anniston, Alabama. The Board also may not make its own, independent judgment as to medical questions. See *Colvin v. Derwinski*, 1 Vet. App. 171, 175 (1991). The only competent nexus opinions of record attribute the Veteran's current disorders to heredity, metabolism, and other non-service causes. There is no competent opinion that relates the Veteran's diabetes mellitus or peripheral neuropathy to any disease or injury of service, including a toxic exposure. Accordingly, the claims will be denied.

#### REASONS FOR REMAND

##### 5. Service connection for a kidney disorder.

A rating decision of June 2017 denied service connection for a kidney condition. The Veteran appealed by filing a NOD in June 2017 and VA Form 9 in January 2018. She seeks entitlement to service connection for kidney problems, as due to her alleged exposure to chemical and herbicide agents while at Fort McClellan, Alabama. VA has a duty to consider a claim under all theories of entitlement. See *Moody v. Principi*, 360 F.3d 1306, 1310 (Fed. Cir. 2004).

Cardiovascular–renal disease is listed as a chronic disease for which service connection may be presumed under certain circumstances. 38 C.F.R. § 3.309(a). The Veteran has been diagnosed with chronic kidney disease, coronary artery disease, and hypertension. Chronic kidney disease is not a listed chronic disease entitled to a possible presumption of service connection, nor is it listed as a disease for which service connection may be presumed based on herbicide exposure. Service connection may nonetheless be established upon sufficient evidence of actual causation. 38 U.S.C. § 1113(b); see also *Combee v. Brown*, 34 F.3d 1039 (Fed. Cir. 1994).

A service treatment record (STR) of May 1978 noted stomach cramping and headaches for one day. The assessment was viral enteritis. An STR of May 1979 noted the Veteran's complaint of painful urination for two days, urinalysis showing more than trace protein, and POS occult blood, 1–3 red blood cell. Also noted was medical approval to treat genitourinary gonorrhea, non-specific urethritis, and vaginitis. The assessment was rule out pyelonephritis. The Veteran was prescribed ampicillin and [illegible].

In February 2023, the Veteran underwent a VA examination for kidney conditions. The diagnosis was chronic kidney condition.

For the separation examination report of August 1979, the Veteran was found to have normal viscera. No defects or diagnoses were noted upon examination. For the report of medical history, however, the examining clinician noted painful urination and hematuria, an intravenous pyelogram (IVP) within normal limits, and an undocumented history of gall bladder [illegible]. For the report of medical history, the Veteran answered "yes" as to having any past or current kidney stone or blood in urine, gall bladder trouble or gallstones, and frequent or painful urination.

A VA nexus opinion was obtained in February 2023. In the clinician's opinion, the Veteran's kidney condition is less likely than not caused by the indicated toxic exposure risk activity(ies), namely unconfirmed, possible exposure to mustard gas in boot camp as a patch or droplet (single) and unconfirmed exposure to PCBs in a town near Fort McClellan, after considering the total, potential exposure through all applicable military deployments of the Veteran and the synergistic, combined effect of all toxic exposure risk activities of the Veteran. The rationale was that the Veteran's stage III kidney disease has multiple etiologies, including type 2 diabetes, hypertension, and the use of non-steroidal anti-inflammatory drugs (NSAIDs) and is not related in any way to the claimed possible exposures.

The Veteran is competent to report painful urination and hematuria during service, as documented in the service treatment records and separation examination report. See *Layno v. Brown*, 6 Vet. App. 465, 470 (1994). A VA examination and nexus opinion must be adequate, and incomplete analysis is not adequate. See *Barr v. Nicholson*, 21 Vet. App. 303 (2007); *Stefl v. Nicholson*, 21 Vet. App. 120, 124 (2007).

The February 2023 VA nexus opinion is not adequate, because no consideration was given to the Veteran's competent report of her in-service symptoms as they may relate to the onset of the current kidney disorder. An adequate nexus opinion must consider a veteran's competent report as to the onset and history of the claimed disorder. See *Miller v. Wilkie*, 32 Vet. App. 249, 257 (2020). Accordingly, the Board will remand for an additional VA nexus opinion. 38 C.F.R. § 19.9(a).

The matter is REMANDED for the following action:

1. By remanding this claim, the Board makes no credibility determination, expressed or implied, at this juncture.
2. Undertake appropriate development to associate with the record any outstanding and identified private medical records that are pertinent to the remanded claim and any outstanding VA treatment records. All efforts to obtain such records must be documented in the claims folder.
3. Obtain an opinion from an appropriate clinician as to the nature and etiology of the Veteran's kidney disorder. The clinician must offer an opinion as to whether any such disorder at least as likely as not:
  - a. Is related to an in-service disease, injury, or event of service, to include any

relevant symptoms documented in the service treatment records, the separation examination report, and as otherwise competently reported by the Veteran;

- b. Is nephritis;
- c. Is an aspect of cardiovascular-renal disease;
- d. Manifested during active-duty service or within one year after discharge from service; or
- e. Was noted during service such that the condition was not shown to be chronic at that time or a diagnosis of chronicity could be legitimately questioned, and there was a continuity of the same symptomatology since service.

Notify the clinician that the standard "at least as likely as not" is defined as the "likelihood is at least approximately balanced or nearly equal, if not higher." Conversely, "less likely than not" is defined as the "likelihood is less than approximately balanced or nearly equal."

Notify the clinician that the Veteran, as a layperson, is competent to attest to matters of which she has first-hand knowledge, including observable symptomatology.

If the clinician cannot provide an opinion without resorting to mere speculation, he or she shall provide a complete explanation for why an opinion cannot be rendered. In so doing, the clinician shall explain whether the inability to provide a more definitive opinion is the result of a need for additional information, or that he or she has exhausted the limits of current medical knowledge in providing an answer to that particular question(s).

A rationale is required for all opinions in the report.

G. A. WASIK

Veterans Law Judge

Board of Veterans' Appeals

Attorney for the Board Steven Najarian

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.