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Hepatitis C is a Result of Receiving Immunizations in Service by Means of a Multi-Use Jet Gun Injector.

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On appeal from the Department of Veterans Affairs (VA) Regional Office (RO) in
Reno, Nevada

THE ISSUE

Entitlement to service connection for Hepatitis C.

REPRESENTATION

Appellant represented by: Disabled American Veterans

ATTORNEY FOR THE BOARD

D. M. Casula, Counsel

INTRODUCTION

The veteran had active service from July 1978 to May 1980.

This matter comes before the Board of Veterans' Appeals (Board) from a November 2004 RO rating decision which denied service connection for Hepatitis C. Pursuant to an October 2005 motion and the Board's granting thereof, this case has been advanced on the Board's docket under 38 U.S.C.A. § 7107 (West 2002) and 38 C.F.R. § 20.900(c) (2005).

FINDING OF FACT

Hepatitis C is a result of receiving immunizations in service by means of a multi-use jet gun injector.

CONCLUSION OF LAW

Hepatitis C was incurred in service. 38 U.S.C.A. § 1131 (West 2002); 38 C.F.R. § 3.102, 3.303 (2005).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

A. Duty to Notify and Assist

The Veterans Claims Assistance Act of 2000 (VCAA) describes VA's duty to notify and assist claimants in substantiating a claim for VA benefits. 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5107, 5126; 38 C.F.R. §§ 3.102, 3.156(a), 3.159 and 3.326(a). In this case, in a letter dated in August 2004, the veteran was notified of the duty to notify and assist requirements of the VCAA. However, in light of the result here (a full grant of the claim for service connection), the Board finds that a detailed discussion of the VCAA is unnecessary. Any potential failure of VA in fulfilling its duties to notify and assist the veteran is essentially harmless error.

B. Service Connection for Peripheral Neuropathy

Service connection may be granted for a disability resulting from injury or disease incurred in or aggravated by active service. 38 U.S.C.A. § 1131; 38 C.F.R. § 3.303.

In this case, the veteran contends that he received vaccinations in July 1978, upon entry into active duty, and that these injections were given by a type of air injector and were not sanitized between injections on recruits.

The pertinent evidence of record will be briefly summarized. Service medical records show that the veteran received several vaccinations and immunizations upon his entry into service in July 1978. Service medical records show no high risk activities other than on the veteran's entrance (and separation) examinations it was noted that he had two tattoos on his arms.

Post-service private treatment records show that Hepatitis C was diagnosed in 2002, and that the veteran had elevated liver function tests in the years prior to that.

In August 2004 the veteran submitted his responses to the Risk Factors for Hepatitis C Questionnaire. He responded "no" to intravenous drug use, intranasal cocaine use, high-risk sexual activity, hemodialysis, sharing toothbrushes or razor blades, having a blood transfusion, and having been a healthcare worker. He indicated he had tattoos, but that he did them himself with "indian ink" when he was 12 years old and claimed he did not share any needles. He also claimed that the only non-sterile needles he ever had were the air injectors used in the Navy, and he also claimed that in the Navy multi-dose bottles were used.

In a December 2004 letter, Dr. David Kohl, the veteran's treating physician, opined that the veteran had Hepatitis C "that likely was contracted when he received vaccinations from multi-dose vials when he was in the Navy in [the] late 1970s". Dr. Kohl noted that the veteran reported he never used intravenous drugs and had one tattoo that he had put on his shoulder himself with a sewing needle.

In support of his claim the veteran has submitted several documents pertaining to Hepatitis C, Hepatitis B, and the use of multi-use jet injectors in service. In one document, a June 2004 VBA fast letter, it was noted that the large majority of Hepatitis C virus infections can be accounted for by known modes of transmission, primarily transfusion of blood products before 1992 and injection drug use. See VBA Fast Letter 04-13 (June 29, 2004). The conclusion was that despite the lack of any scientific evidence to document transmission of the Hepatitis C virus with air gun injections, it was "biologically plausible". The VBA fast letter indicated that it is essential that the report upon which the determination of service connection is made included a full discussion of all modes of transmission, and a rationale as to why the examiner believes the air gun was the source of the veteran's Hepatitis C.

Received from the veteran in September 2005, along with a waiver of initial review by the RO, was a September 2005 letter from a VA physician. (The record reflects that this evidence was received beyond the 90 day period subsequent to the RO's certification of the appeal to the Board. In November 2005, however, the Board granted the veteran's motion to have the Board accept new evidence and show good cause as to why the evidence could not have been submitted within the 90 day period. Therefore this evidence may be considered by the Board herein.)

In the September 2005 letter, the VA physician noted that the veteran was under her care and had been diagnosed with active Hepatitis C since 2002, and that a review of his records showed elevated liver function tests since 1987. It was noted that the veteran denied a history of illicit drug use or sexual promiscuity, and had never received any blood transfusions. He had two small tattoos on his arms which he administered himself as a child. It was also noted that the veteran received immunizations by means of multi-use jet gun injectors while in service. The VA physician indicated that a review of the medical literature, including a report from the CDC MMWR dated in June 1986, confirmed a high correlation between this method of immunization and Hepatitis C infection (the Board notes that this excerpt actually pertains to the Hepatitis B virus). The VA physician also noted that a review of a document from the Department of Defense - Epidemiology Board dated in January 1998 strongly recommended that multi-use jet gun injectors not be used because of the risk of transmission of blood borne diseases. The VA physician then opined that the veteran contracted Hepatitis C "from the use of jet gun injector [sic] during his vaccinations while in military service".

When all of the evidence is assembled, the Board must decide whether the evidence supports the claim or is in relative equipoise, with the veteran prevailing in either event. *Gilbert v. Derwinski*, 1 Vet.App. 49, 55 (1990).

The Board notes that there are both private and VA medical opinions of record which support the veteran's claim. The Board also notes that there is no negative or contrary evidence of record, other than the VBA Fast Letter 04-13 which concluded that there had been no case reports of the Hepatitis C virus being transmitted by air gun transmission. The conclusion in the VBA Fast Letter, however, as noted above was that despite the lack of any scientific evidence to document transmission of the Hepatitis C virus with air gun injections, it was biologically plausible. Both the veteran's private physician and the VA physician have essentially excluded the usual risk factors as the etiology of the veteran's Hepatitis C. Moreover, these opinions contain information that is consistent with the evidence of record, together with the reasoning for the opinion given.

Thus, given the positive medical evidence in support of the veteran's claim and considering the entire evidence of record, the Board will grant the claim. The Board finds that the veteran's Hepatitis C was contracted in service as a result of his receiving shots via a multi-use jet gun injector, and therefore service connection for Hepatitis C is warranted.

ORDER

Service connection for Hepatitis C is granted.

H. N. SCHWARTZ
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs