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AGENT ORANGE (DIOXIN) AND ESOPHAGEAL CANCERS
AND DIGESTIVE SYSTEM CANCERS
AS WELL AS OTHER TOXIC CHEMICALS
ASSOCIATED TO MILITARY SERVICE IN VIETNAM

THIS IS A DRAFT AND IS NOT COMPLETE

POSTED ON:

REVISED ON:

Hard copies will be sent to:

Congressman Christopher Shays -Democrat - Connecticut
Congressman Bernie Sanders - Independent - Vermont
Congressman Lane Evans - Democrat - Illinois
Congressman Christopher Smith - New Jersey Republican

Yes, out of the entire congress these four are the only four that after four years of searching that I can find that actually might give a damn.

GENERAL

This link is posted in support of Veterans widows and those Vietnam Veterans that have developed Esophageal Cancer as well as other "Cancers of the Digestive System."

A group of dedicated wives from California, Michigan, New Jersey, and Wisconsin have chosen to fight the government in this issue, rather than just give up.

I believe it is obvious to the whole world that ESOPHAGEAL CANCER among other forms of "Digestive System Cancers" are significantly higher in those Veterans who served in Vietnam during wartime and were exposed to the "weapons of mass destruction" toxic chemicals (plural) that were used as offensive and defensive weapons.

Many Veterans came home in poor health and one of the medical issues was gastrointestinal problems. Most of us thinking we had issues related to the malaria pills and once removed we would return to our old selves, with no medical issues. This in fact did not happen.

We were diagnosed with all kinds of issues of the gastrointestinal area of medicine while none of it made any sense. Diagnosed with spastic colon, colitis, diverticulitis, Chron's, IBS, Celiac, delayed stomach emptying causing gastroparesis, etc. Most of these were considered hereditary related or old age. Yet, we were young men with no hereditary trail to these disorders. Some had rectal bleeding. Aversion to milk products and heavy red meats when the year before they went; there were no aversions to any food products or drinks and no digestive system issues.

The Australian Veterans that served in III Corps reported the same issues: (1)

"Dermatological, neurological, gastrointestinal, and psychological disorders.

Chloracne, an incurable rash on the face, neck, back, arms and legs, boils, blisters, skin irritation and sensitivity to sunlight.

Loss of sensation and tingling in the fingers and toes, intolerance to cold, damage to the peripheral nervous system. Constant fatigue. Depression, inability to concentrate, nervousness and irritability, insomnia, vertigo, loss of sex drive, recurring headaches, nausea and sudden unexplained weight loss. Red blood rectal bleeding has also been reported.

Respiratory distress, shortness of breath, allergies, tender liver, recurring digestive upset and slowed digestion, vascular lesions, stomach, intestinal kidney and liver pain, and stiffness. Swelling and pain in the joints of the arms and legs."

Many have developed Barrett's Esophagus, which can be a precursor to the cancer. This is from the body's deranged cell system replacing the esophageal tissue with tissue similar to what is found in the small intestines.

The Ranch Hand transcripts for those primarily exposed by skin contact only, stated: (2)

> "That digestive system cancers were on the low end of being significant."

Those exposed by "skin contact alone" were on the "low end of being significant." What about the rest of the men called "boots on the ground?" These men in the field and on the remote firebases that would never have been in a toxic chemical clean environment and had totally different methods and rates of exposures and ingestions.

Bearing in mind that any Ranch Hand study comparisons that do not reach double statistical significance mean nothing. This is a government (White House) game played by the Ranch Hand, the VA, and our government.

> In other words, in one group there may be 5 and the other group their may be 3. The government says that the statistics do not mean anything as the significance between the two is not a valid increase. Bearing in mind, that both groups are Vietnam Veterans. The difference is the amount of dioxin. I believe the cut off was 10ppt of dioxin alone in considering who was exposed and who was not exposed. When no one knows what other toxic chemicals played a part or what the dose rate of dioxin actually is to cause anything medically; I find this whole 140 million dollar study issue very much slanted and certainly questionable.
>
> Now one would ask; why is it that Veterans exposed to massive amounts of three different toxic chemical herbicides that contained at least six different toxic chemicals can only be affected by some dose rate of dioxin alone, established by this study and not medical science?
>
> This would be a good question for everyone to ask of the following; if all of them were still alive:
>
> Presidents John Kennedy, Lyndon Johnson, Richard Nixon, Gerald Ford, Jimmy Carter, Ronald Reagan, George H. Bush, William Clinton, and George Bush.
>
> Some others that should be questioned on this amazing feat of medical science and wonderment should be the former Secretaries of Defense.
>
> Secretary of Defense Robert McNamara, Melvin Laird, Elliot Richardson, James Schlesinger, Donald Rumsfield, Harold Brown, Caspar Weinberger, Frank Carlucci, Richard Cheney, Les Aspin, William Perry, William Choen, and for the second time Donald Rumsfield.
>
> Obviously Mr. Rumsfield should now have some answers to what must be considered a miracle of science and protection of the 19th century that can only be attributable to the Uniform of the United States Military.
>
> Certainly the Secretaries of the VA should have some medical answers to this medical marvel of the uniform of the US military that can double as environmental toxic chemical hazards suits to not only skin exposures but drinking, eating cooked food, and bathing all in which toxic chemical water was used.
>
> Edward Derwinski who used the totally Veteran biased VA committee (VACEH) of former chemical company scientists should know.

Jesse Brown, Togo West, Anthony Principi and the latest of these so called men of integrity Jim Nichols should know how this is all possible - since they make the Veterans biased decisions based on the government contracted NAS/IOM. Yes, that is correct the same government Veterans are seeking death and disablement claims from hired what seems to be a VA friendly National organization that also receives funds from that same government. Just a slight conflict of interest. No different than the government tainted CDC AO study fiasco in the 80's. HR 101-672.

Maybe they can answer why it is that a former Monsanto chemical company scientist was selected to run the VA's AO study. When his prior professional job was to prove there is no damage from dioxin or any other product that Monsanto made and it was like Orange Juice and good for you.

If you Veterans or widow's of Veterans reading this find these facts somewhat VA/Government slanted then join the rest of the Veterans of the nation that use to actually trust our government and do so no more!

In other words, one hell of an expensive study that for all intensive purposes proves nothing except death rates and exoneration of our government! Except it does prove service in Vietnam in a toxic chemical(s) (plural) environment was not good for you in many medical areas; thanks to our own government!

One of my Marines, tired of no VA answers, called one of the Gastrointestinal Disease centers and they told him that they had estimated about 70% came home with some form of gastrointestinal issue. I am trying to re- contact this Marine and get the details of this conversation.

I recall during the period of about five years after returning, while doctors tested me over and over again, that my mother found an article in our home town newspaper. This article was in reference to a news story concerning some doctors at the University of Florida and the study they were conducting to see "why so many Vietnam Veterans were coming home with gastrointestinal issues."

So this medical issue and problem has been "well known" since at least the early 1970's.

Too bad we did not have the Internet back then!

GOVERNMENT/VA PHILOSOPHY AGAINST VETERANS

Our own Veterans Administration in its entirety, to include the Secretary of the VA, operates as a White House after White House "budget control" rather than the tell the Veterans and their families the truth for over 40 years or even give Veterans a fair assessment of our toxic chemicals health status.

It is our Congress, rather than support the Veterans for their search for the truth, that remains deaf and blind in order to support these different White Houses and keep the government coffers for other programs.

Yes, that does include your own congressional representative and your two state senators; who state they care about Veterans.

While our own US government/VA studies, have been less than objective and truthful with regard to many medical issues for many reasons to include, politics and money; and the fact that the White House decision philosophy was made decades ago to "not support" the Vietnam Veterans of this nation for obvious "government wrong doing."

> "The White House Bureau of the Budget put out a memo to all the agencies of government in essence not to find a correlation between Agent Orange and health affects. Stating that it would be most unfortunate for two reasons:
>
> A) The cost of supporting the Veterans.
> B) The court liability to which corporations would be exposed." (3)

At this time in our "toxic chemical legacy," our own White House/government and the chemical companies became an "official tag team of coconspirators."

In fact, Admiral Zumwalt (deceased) appointed as a special assistant to the Secretary of the VA to resolve the toxic chemical issues stated in his report the following:

> "Unfortunately, political interference in government sponsored studies associated with Agent Orange has been the norm, not the exception. In fact, there appears to have been a systematic effort to suppress critical data, or alter results to meet preconceived notions of what alleged scientific studies were meant to find" (4)
>
> "Were the faulty conclusions, flawed methodology and noticeable bias of the Advisory Committee (VACEH) an isolated problem, correcting the misdirection would be more manageable. But, experience with other governmental agencies responsible for specifically analyzing and studying the effects of exposure to Agent Orange strongly hints at a discernible pattern, if not "outright governmental collaboration," to deny compensation to Vietnam Veterans for disabilities associated with exposure to dioxin. (5)
>
> "Unfortunately, as hearings before the Human Resources and Intergovernmental Relations Subcommittee on July 11, 1989 revealed, the design, implementation and conclusions of the CDC study were so ill conceived as to suggest that political pressures once again interfered with the kind of professional, unbiased review Congress had sought to obtain." (6)

Admiral Zumwalt using independent researchers and independent prestigious research centers, and that is the key word "independent", during a three year study as special assistant to the Secretary of the VA concluded the following were "more than likely" associated to exposures to dioxin.

> Non-Hodgkin' s lymphoma, chloracne and other skin disorders, lip cancer, bone cancer, soft tissue sarcoma, birth defects, skin cancer, lung cancer, porphyria cutanea tarda and other liver disorders,

Hodgkin's disease, hematopoietic diseases, multiple myeloma, neurological defects, autoimmune diseases and disorders, liver cancer, nasal/pharyngeal/esophageal cancers, leukemia, malignant melanoma, kidney cancer, testicular cancer, pancreatic cancer, stomach cancer, prostate cancer, colon cancer, brain cancer, psychosocial effects, and gastrointestinal disease are service-connected. (7)

This VA Agent Orange report was promptly classified and stamped, "Not for Release to the Public."

For the record, in 2000 a former Principal Ranch Hand scientists Dr. Richard Albanese, Senior Medical Research Officer, in a government oversight review categorically stated, just as the Admiral indicated above, that for 20 years the government study called Ranch Hand Study had never told the truth in:

"Birth defects, cancers, heart disease, vascular disease, neurological ailments, endocrine disturbances, and hematological difficulties." (8)

He also charged that "command influence" was being used as well as Air Force management was changing cleared for publication "medical findings and conclusions." (8)

He also asked how any studies could be considered legitimate if the scientists were not considered to have intellectual freedom. (8)

Prior to the use of these "weapons of mass destruction" the process used by the government for Veterans compensations was an "increased risk of incidence" or a "significant increase." Of course all of this changed when our own government turned against Veterans for mistakes made by an arrogant President Johnson and the arrogant Robert McNamara.

Yes, they were warned by over 5,000 of our own US scientists in at least two petitions not to use these toxic chemicals of weapons of mass destruction. Of course they did it anyway because this government treats its Veterans as guinea pigs. (Reference the Project 112 testing and subset testing of SHAD.)

For the record, Veterans tiring of trying to fight this "government legal system" set up for "only Veterans" have mounted a law suit against many individuals in the VA for their direct personal actions, regardless of what politician command the cover-ups or stalling.

These VA individuals are being charged as follows: (9)

"The VA officials named are Susan H. Mather, Neil S. Otchin, Robert J. Epley, and Thomas J. Pamperin. The suit alleges that these people orchestrated or contributed to a cover-up - characterized as "intentional, willful, wanton, and in bad faith" in the complaint - of SHAD and its possible adverse health effects by denying veterans access to information about the tests. "These are people who signed or stamped the letters and denials," lawyer Rosinski said."

"The complaint holds that by not providing timely information to the veterans - the military knew as early as the mid-1980s that at least one substance used was emphatically not harmless, as originally believed - and by continuing to deny veterans access to the full information, the defendants violated the plaintiffs' constitutional right to go to court and file claims. It is by specifically naming defendants that the suit hopes to change things."

This is typical of what our government has done for over 40 years with the VA being the lead federal agency in government denial. Certainly the toxic chemical legacy of our Vietnam Veterans will fall into this above example of "the military knew as early as the mid-1980s that at least one substance used was emphatically not harmless, as originally believed - and by continuing to deny veterans access to the full

information... By using the entire power of the United Sates Government and its contracted agencies egregious medical fraud has been committed against the nation's Veterans by our own government.

A more recent example of this medical fraud is our Gulf War Veterans. Many came home sick and dying while our government minimized this fact and our national media totally ignored these facts.

The lead agency for denial was; once again the White House directed VA and its contracted partner the NAS/IOM in representing that the Veteran's death, sickness and disabling disorders, and birth defects regarding our nation's Veterans was "associated to mental stress" in a war that took less than 200 hours and suffered very minimal casualties.

That in itself makes no medical sense.

Yet, here we have on October 14th, 2004 in the New York Times an article that states: (10)

> Citing new scientific research on the effects of exposure to low levels of neurotoxins, the Research Advisory Committee on Gulf War Veterans' Illnesses concludes in its draft report that "a substantial proportion of Gulf War veterans are ill with multisymptom conditions not explained by wartime stress or psychiatric illness."
>
> A federal panel of medical experts studying illnesses among veterans of the 1991 war in the Persian Gulf has broken with several earlier studies and concluded that many suffer from neurological damage caused by exposure to toxic chemicals, rejecting past findings that the ailments resulted mostly from wartime stress.
>
> All the chemicals cited in the new study belong to a group called acetylcholinesterase inhibitors, which can cause a range of symptoms including pain, fatigue, diarrhea and cognitive impairment.

Yet, for over a decade the VA and the NAS/IOM had concluded this ridiculous scenario that stress was the sole causation. Nice cover up for the DOD and our government.

Also bearing in mind that the original study group reported to President Bill Clinton in 1996 that "current scientific evidence does not support a causal link" between the veterans' symptoms and chemical exposures in the Persian Gulf.

Instead, the earlier group said, stress "is likely to be an important contributing factor to the broad range of physical and psychological illnesses currently being reported by gulf war veterans."

Some 697,000 American troops were sent to the Persian Gulf at the end of 1990 to drive the Iraqi forces of President Saddam Hussein out of Kuwait. Thirteen years after the war ended many veterans still complain of persistent fatigue, headaches, joint pain, numbness, diarrhea and other health problems. Sounds oh so familiar to the Vietnam Veterans.

In fact, the law to mandate this new study was passed in 1998 yet it was not acted on until 2002. Four more years of government/VA stalling.

Out of the 697,000 troops, 16% are conservatively estimated to be effected by this so called stress syndrome with significant similar symptoms in 2004. Many have already succumbed to this "stress syndrome."

In any deployment such as this only about 10-14% of the deployment is actual combat troops. So that means that all of the combat troops are either dead or dying from this so called stress syndrome. This also includes the same rate for our allies troops that were also deployed.

This is how the United States Government actually treats its veterans; including our congress. What you see on TV on CSPAN in the senate and the house, is a mirage and is a total facade as they recite the praises for the military men and women. It is all a big academy award winning show.

In other words, there is no "increased risk of incidence" or "significant increase" for Veterans and especially Vietnam Veterans.

This only exists in the world of civilians and the world of civilian constitutional law. It can no longer exist in the government created "Veterans World of VA Law," which is outside the constitution of the United States.

GOVERNMENT ACTIONS

For over 20 years our government denied any causations of medical issues related to the toxic chemicals. To stop the onslaught of legitimate claims for death and disablement that developed after irrefutable evidence was being brought forward of the overwhelming medical issues the Veterans were developing our government then:

- Set up an entire legal system that only applies to Veterans and is outside the constitution and constitutional law for the rest of the nation.
- Rather than increased "risk of incidence" or "significant increase" our government and the VA then mandated "cause and effect" results.
- After a court found that this "cause and effect" was impossible; given the numbers of toxic chemicals and the variety of exposures and was too stringent in favor of the government. The Secretary of the VA, while not challenging the court ruling, then wrote the CFR to only include the chemical formula for dioxin only, with a mandated statistical significant increase and a p-factor of 0.05 attached to it.

Note: A p-factor of 0.05 is the worlds scientific standard for proving there is no doubt or there is little chance the differences found were associated by chance alone.

- Congress, in a total ruse, then passed the Dioxin Act of 1984. This had to be one of the biggest lies every put out by our Congress. This act gave the "benefit of the doubt" to the Veterans in this unknown toxic chemical legacy. Totally disregarded by the VA and the Secretary of the VA for over 21 additional years over the previous 20 years of denial of everything. With our own VA the lead denial federal agency, as directed by the White House.

By default because of these actions by the Secretary of the VA, supported by our own government there can be no toxic chemical associations to just "Service in Vietnam" in a toxic chemical environment. Only those medical issues found to a linear dose rate to dioxin alone can be associated out of the many many toxic chemicals used. Even many of these that are actually found are not being brought forward because the government scientists indicate they cannot find any overt disease that qualifies to a 100 year old ICD code. They find a damaging process related to dioxin but because they are unfamiliar and cannot explain what this unknown toxic chemical is doing in this damaging process; it then falls by the way side and once again is not reported to the medical community or the nation's Veterans.

In addition, many medical issues found in study comparisons between cohorts that reach a 50% increase or even higher are not considered significant in the eyes of our government for Veterans and their families. These issues do not even make the reports, so our nations doctors are even unaware of these significant medical findings in Vietnam Veterans. This is because while they show a significant increase they do not show a dose response to only dioxin. Remember, the VA created a new philosophy and requirement that there will be no associations based on "Service in Vietnam in a toxic chemical environment."

While the Secretary of the VA did make one exception and that is for female Veterans that had offspring with birth defects. To exclude the male Veterans that had the very same birth defects and at the very same rate; the VA then did not tie this association for female Veterans to a dioxin only but only to "Service in Vietnam." So the VA has made a exception to the dioxin only rule. Remember that! A totally different legal standard was used and the precedence was set.

Outside of our Vietnam Toxic Chemical Legacy this "Service in whatever campaign" does exist.

Remember the New York Times article regarding the Gulf War.

The VA Secretary himself through a spokesperson stated: (10)

"I'm looking forward to studying the committee's report and working with them to ensure adequate research funding to find answers to these perplexing medical issues," he said. He said the department was already providing disability benefits for some veterans who have developed amyotrophic lateral sclerosis, or Lou Gehrig's disease, based on studies finding that the veterans have nearly double the risk of the disease as veterans who did not go to the Persian Gulf do.

Since all government studies for Vietnam Veterans have been corrupted and no study is allowed to only compare those that served versus those that did not serve with the additional government/VA mandate of finding a linear dioxin dose response. (See History) Even if the risk ratio is at 5 or greater it makes no difference to the collaborating government/VA. For the Vietnam Veterans there is no greater risk as stated above by the VA Secretary. Only government corruption and tyranny awaits them to a single end point linear dioxin dose response.

Referencing the Korean study that did not compare like cohorts but those that served versus those that did not serve. The data is very damning. Yet, our congress does nothing. (18)

If you look at the BVA cases in every instance you will see that the VA counselors make the statement, "that the Secretary of the VA has not determined an association to ESOPHAGEAL CANCER and Agent Orange." This is the legal term they use to deny you and as you will see in the History below there has never been a government study on Agent Orange. So that in itself, is nothing but VA counselor lies.

Then we have the statements of the decisions as follows:

DECISION OF THE BOARD

"The Board of Veterans' Appeals (Board), in accordance with the provisions of 38 U.S.C.A. § 7104 (West 1991 & Supp. 1997), has reviewed and considered all of the evidence and material of record in the veteran's claims file. Based on its review of the "relevant evidence" in this matter, and for the following reasons and bases, it is the decision of the Board that the appellant has not met the initial burden of submitting evidence sufficient to justify a belief by a "fair and impartial individual" that the claim of entitlement to service connection for the cause of death is well-grounded."

This is the "government fox" watching the government hen house (government mistake coffers) for the White House and the Congress.

"Fair and impartial" has got to be a joke. About as fair and forthcoming as the government studies have been. (See History section.)

There in lies the problem - The VA, following the march orders of the White House, can limit the issues to only one part of a toxic chemical compound. Then our congress turns around and gives the sole power to the Secretary of the VA to do anything he wants regarding Veterans on behalf of the White House, criminal or not. Then to keep anyone from challenging the VA our congress than sets up a legal system that is biased against Veterans and not under any rule of law or subject to any other courts review.

Congress has clearly precluded any judicial review of any Veterans Administration determinations as set forth in 38 U. S. C. paragraph 211a:

…"the decision of the administrator on any question of law or fact under any law administered by the Veterans Administration providing benefits for Veterans…shall be final and conclusive and no other court of the United States shall have power or jurisdiction to review any decision by an action in the nature of mandamus or otherwise."

A nice total government tyrannical package rolled into one by a collaborative government protecting "itself" for wrongdoing.

As I was reading this to my sister-in-law she exclaimed, "that sounds like communism!"

HISTORY

When any government agency says "Agent Orange" that is a lie and they really only mean dioxin. No, repeat NO, government study has studied the effects of Agent Orange. The government has mandated that all "herbicide studies" be reduced to "dioxin only" which was only one part of the herbicide Agent Orange and Agent Orange was only one of the 15 different formulas of herbicides used with multiple toxic chemicals used.

While the two main other herbicides used were Agent Blue and Agent White each with their own set of toxic medical issues from both acute and chronic exposures.

In fact, while the government states Agent Orange was the most widely used; the most widely used toxic chemical was 2,4-D used in both Agents Orange and White.

It is noted for the record, that all government studies were mandated to those exposed by skin contact alone.

It is noted for the record, that methods of ingestion of toxic chemicals plays a role in what will develop, how it will develop, and when it will develop.

It is noted for the record, that in some areas such as the Quang Tri area in Quang Tri Province that herbicide tapes show more Agent Blue used than Agent Orange.

It is also noted for the record, that most areas of Vietnam were indeed sprayed with all three major toxic chemicals.

It is also noted for the record, that in 1969 as the medical issues were rising and being noted as toxic chemical associated. The State Department, under Jim Baker, got involved in the investigations. After trips to Vietnam the state department report concluded that Agent Orange in its entirety with dioxin; was not a real threat. However, they stated there was some major concerns and issues about Agent Blue since it contained arsenic acid.

Yet, here we Veterans and families are; 40 years later, with the VA, directed by the White House, with every issue associated or non-associated to what they say is Agent Orange, when they really only mean dioxin alone. In spite of the many other toxic chemicals that obviously, according to the VA and the government contracted National Academy of Science, cannot harm Veterans for some magical medical fact.

How can this be?

If you were going to hang your hat on denial and protecting the government coffers from government mistakes and had your own independent omnipotent legal system. Would you not select the most unknown toxic chemical?

Especially, if you knew that the other toxic chemicals had already been characterized as to acute and chronic exposures for decades. Or that your partner in crime, Dow Chemical, and their toxic chemical compound called "Picloram" was DOW proprietary.

In addition, you knew that our own EPA, as the many Veterans' deaths, disabilities, and medical issues were manifesting as toxic chemical issues, in 1985 in order for DOW to re-qualify "Picloram" had demanded they reduce the hexachlorobenzene to less than 200 parts per million and that the nitrosamine be reduced.

Picloram now has less than 100 parts per million and no (zero) nitrosamine. <u>There is no telling what the toxic chemical swill had in it as far as toxic chemical levels when used on Veterans and the terrain for over 10 years.</u>

If you knew that in 1990 Doctor Daniel Teitelbaum, a noted toxicologist stated:

“What I do think...may bear on the Agent Orange issue, is the fact that in review of Dow’s 2,4-D documentation I found that there are significant concentrations of potentially carcinogenic materials present in 2,4-D "which have never been made known to the EPA, FDA, or to any other agency." Thus, in addition to the problem of the TCDD which, more likely than not, was present in the 2,4,5--T component of Agent Orange, the finding of "other dioxins" and closely related "furans and xanthones" in the 2,4--D formulation was of compelling interest to me.” (8)

The bottom line is; we more than likely have other forms of dioxins other than TCDD in the Agent Orange herbicide. Agent Orange was a 50/50 mixture of 2,4,5-T and the DOW 2,4-D referenced by Doctor Teitelbaum. With the additional issues included of closely related furans and xanthones in 2,4-D. This also creates a synergy effect with more than one toxic chemical in the same formula. This can increase the potency of the chemicals as far as 1600 times what each one would be separately. This is especially true if two are further apart on the chemical property scale.

In addition 2,4-D was used a separate herbicide under the nomenclature of Agent White.

Some researchers are saying they actually mixed Agent Orange and Agent Blue together to spray. I cannot verify that but if they did, it is a wonder any one is left alive.

Again, logically you would select the most unknown single toxic chemical that no one knows what it does, how it does it, and has never been characterized; in order to protect the government and the White House. Then you would demand a linear dose response when there is no proof of a linear dose response or that this single toxin will even have a linear dose response. Especially, since you have your own corrupt legal system given to you by the congress; you can now deny any study or animal study you want or even statistical increase data.

Remember the CFR used in VA denials only lists the chemical formula for TCDD.

TECHNICAL/MEDICAL

NITROSAMINE CONTAINED IN AGENT WHITE (12)

"Nitrosamines are another type of carcinogenic chemicals that are known to cause cancers and other medical problems.

Exposure to high concentrations of nitrosamines is associated with increased mortality from cancers of the esophagus, oral cavity, and pharynx (throat).

When used in pesticides or herbicides it may cause DNA damage and cell death."

CACODYLIC ACID (DIMETHYL ARSENIC ACID) WHICH WAS CALLED AGENT BLUE (13)

Agent Blue: This was a code name for cacodylic acid (dimethyl arsenic acid) that was used from 1965 to 1970.

Agent Blue produces a spectrum of acute toxic symptoms that includes gastrointestinal disorders, eye irritation, and dermatitis. Studies in experimental systems have indicated that it has the potential for mutagenicity, clastogenicity (chromosome damages), and teratogenicity.

Carcinogenicity has not been tested adequately, but it should be noted that other inorganic arsenic compounds have been associated with liver, lung, skin, and stomach cancers.

It is highly toxic by inhalation, ingestion and through skin contact. It may cause irreversible effects and death. It may act as a teratogen or carcinogen; or skin, eye and respiratory irritant.

Symptoms include:

Garlic type odor of breath and feces, and metallic taste in the mouth.

Adverse GI effects predominate with vomiting, abdominal pain and rice-water, or bloody diarrhea.

GI effects may also include inflammation, vesicle formation, and eventual sloughing (shedding) of the *mucosa in the mouth, pharynx, and esophagus.

*Note: Mucosa is moist tissue that lines particular organs and body cavities throughout the body, including your nose, mouth, lungs, pharynx, esophagus, and gastrointestinal tract.

Central nervous system effects that are common include: headache, dizziness, drowsiness, and confusion.

Symptoms may progress to include muscle weakness, spasms, hypothermia, lethargy, delirium, coma, and convulsions.

Renal injury manifests as proteinuria, hematuria, glycosuria, oliguria, and shows up in the urine. In severe poisoning cases, acute tubular necrosis results.

Cardiovascular effects include shock, cyanosis, and cardiac arrhythmia.

Elevated liver enzymes and jaundice may manifest causing liver damage.

Injury to blood-forming tissues may cause anemia, leucopenia, and thrombocytopenia.

Chronic exposure may lead to:

- Muscle weakness, fatigue, anorexia, weight loss.
- Hyperpigmentation, hyperkeratosis.
- Peripheral neuropathy, paresthesia, paresis, and ataxia.
- Inability to coordinate voluntary muscular movements.
- Subcutaneous edema in face, eyelids, and ankles.
- Stomatitis, white striations across the nails (Mees lines) and sometimes loss of nails or hair.
- Liver toxicity as indicated by hepatomegaly, jaundice, and cirrhosis.
- Renal toxicity leading to oliguria, proteinuria, and hematuria.
- EKG abnormalities and peripheral vascular disease.
- Hematologic abnormalities.
- Cancer.

DIOXIN ITSELF

While our own EPA in the 70's and 80's operated as a direct White House collaborative operative in our toxic chemical legacy issue. It seems that in 1992 they did get at least some integrity back.

Starting with what the EPA called their "Dioxin Reassessment" study in 1992. Which for all intensive purposes parallel a report that was done in 1979 by one of the EPA scientists who actually did have some integrity. For some "unknown and unexplained rationale" this report was shelved by the EPA in 1979 and not released.

Another hero EPA scientists during this time found that many of the chemical company studies being presented in actual court cases were fraudulent and corrupted. When she made this known to the EPA enforcement, her reward was to be punished and set aside by the EPA, operating as a White House and VA pawn.

Remember, the entire US Government using collaboration was denying any and all medical issues up until 1990, some 23 years while Vietnam Veterans died and became disabled. Denied any and all serious side effects from our toxic chemical legacy and exposures.

In reviewing the EPA reassessments in 1992, 1994, and 1996 the emergence of EPA dioxin expert Dr. Linda Birnbaum is a ray of hope for all Veterans. Although, there seems to be some end fighting going on between the less than truthful Ranch Hand studies and their studies that are slanted towards "government exoneration" as opposed to scientific facts and the new EPA dioxin expert at the EPA.

Very similar to the CDC that sold their "scientific soul" to our White House in the 80's. (14)

I find it very interesting and questionable when I do review a Ranch Hand report and find zero references to any EPA findings and OTA study findings. Also, I have seen references that there does seemed to be some disparity between the two entities. In reviewing both the EPA reassessments and the Ranch Hand scientific transcripts, not the published and crafted reports, I find many of the same issues being discussed and found. While the Ranch Hand then "exonerates the findings" the EPA expands on the issues.

How long before the White House or the new EPA Director at behest of the president who appointed him puts the clamps on Dr. Birnbaum is the question.

One issue that the EPA discusses in their reassessment is the immunotoxicity of dioxin.

That the threshold for immunotoxicity is 100 times less than that of a cancer. And that for some disorders created by dioxin there does not seemed to be a threshold. So much for the Ranch Hand study linear dose response only government/VA mandated study constraint.

One would also wonder if the threshold for immunotoxicity is 100 times less than that of cancer then where are the immunotoxicity issues listed on our VA and NAS/IOM hit parade. You cannot have one without the other, except at the VA.

I think most people are aware that cancer develops. It is not some magical medical moment you have cancer. It is a series of cell derangements and maturations that end up being a malignant cancer. This process can stop at any time for whatever reason leaving you with many other debilitating issues and even death from the autoimmune diseases that are created. Including other disorders such as medical conditions that may be in-between two cancers that are listed on our VA and NAS/IOM hit parade. These would be in the form of many issues and symptoms such as amyloydosis or many deranged antibody issues that are created, or even some form of connective tissue disorders.

The EPA discusses the lack of an immune system and the creation of an attacking immune system and that you can actually have both.

> "Effects on the liver: There are some differences in different species but, in general, you see enlargement of the liver, you see accumulation of fat in the liver. In some tissue, you have hyperplasia, which is a proliferation of cells. The tissue actually gets bigger from having more cells, and this occurs in the lining of the gastro-intestinal tract, it occurs in the lining of the urinary tract, and it occurs in the bile duct, which comes from the liver.
>
> In other kinds of cells, instead of getting hyperplasia, which is an inappropriate proliferation of cells, you get squamous metaplasia, which is an inappropriate differentiation of cells.
>
> It is not that an eye turns into an ear, but in fact, one type of cell turns into another type of cell. It starts behaving like that cell. So, one of the classic kinds of symptomatology that we see in humans, is metaplasia of the meibomian glands of the eye. Now, meibomian glands are little glands at the base of your eyelid that secrete very small amounts of fluid. With exposure to dioxins, these actually change and start producing waxy exudates on your eye that makes vision very difficult and this is a complaint of people who have had very high levels of dioxin exposure. They also complain of problems with hearing. There are glands that line your ear canal, which are called the ceruminous glands and these undergo an inappropriate differentiation and start producing earwax. These are not the normal glands that produce normal earwax." (15)

Now that last paragraph is some scary stuff to think that dioxin can create these issues for external organs and glands and think what this poison is doing to your internal organs.

So the bottom line is the "dioxin damaging process that is created," not the end item ICD code that not everyone will reach, based on many many variants. To include there is no ICD code for total body system disruption caused by toxic chemicals that have never been identified as to some sort of syndrome.

What Dr. Birnbaum described is about as close as you come to a body's response to some form of antigen or virus. While the dioxin itself does not appear to create an antigenic response the damage it creates from cell derangement and hormone and enzyme changes does parallel a body response to a virus. Very similar to the Epstein-Barr virus (EBV), or AIDS virus, or even Hepatitis C virus.

All of these, including the cancers we have listed on our VA and NAS/IOM hit parade all seemed to be associated with B and T cell issues.

In talking to the NAS/IOM I posed this theory that it seemed dioxin was creating a body response similar to that of a virus such as Epstein-Barr virus (EBV), or AIDS virus, or even Hepatitis C virus. The immediate response, with no hesitation, from the NAS/IOM was, "There is no proof of that." Almost as if they indeed know that this is a very likely scenario but do not want to confess that fact.

In 2003 the Korean Agent Orange Immunotoxicological seven year Impact study that was not as anti-veteran and constrained as our own government studies found Immune-Modulation: (16)

"Overall, this study suggests that military service in Vietnam and/or Agent Orange Exposure disturbs the immune-homeostasis resulting in dysregulation of B and T cell activities."

Found disturbed in this study were.

IFN gamma
TNF alpha
IL-4
IL-10
IL4:IFN gamma ratio

Once again this describes a reaction similar to that of an exposure to a virus which can set off many issues including any predisposition by genetics. Which would now mean that anything associated to this damaging processes should more than likely be associated, especially if trends are found whether there is a linear dose response found to dioxin only or not.

Example: You can have the genetics for celiac-sprue all your life and never have a problem. You may have the Human Leukocyte Antigen (HLA) genes specifically linked to celiac disease of DR3, DQ2 and DQ8. But only when you have the immune system issue or virus like response created by dioxin will this disease manifest. Normally associated with T-cell involvement.

In my novice research, I found many issues on our VA and NAS/IOM hit parade that are already associated with the EBV in many medical publications. In addition, I found most of the issues associated and those issues that we know are prevalent among our Veterans that probably "should be associated" were also involved with B and T cell issues derangement and dysregulation.

Many of the immune system cancers and nasal/pharyngeal cancers are associated to an immune system response from the EBV.

In one study I found "EBV INFECTION OF ESOPHAGEAL CANCER TISSUE AS DETERMINED BY PCR"

Their study indicated - Conclusion: Tentatively, there appears to be a correlation between EBV infection of esophageal tissue and abnormalities of the esophagus.

"The percentages of EBV positive samples amongst the esophagitis (42.3%), esophagus squamous cell carcinomas (42.8%) and esophageal aden carcinomas (42.8%) were rather high. If these results are borne out in further investigations, they suggest a possible role of the EBV virus in the etiology of esophageal diseases. The fact that a large percent of non-cancerous esophagitis samples were positive suggests the virus may play a role in the early stages of abnormalities of the esophagus,...

This is highly suggestive of EBV involvement in Esophageal cancers.

One of the issues associated with Barrett's Esophagus and the development of esophageal cancers is GERD.

I previously reported above, all the gastrointestinal issues reported to include gastroparesis which seems to be related to possible delayed stomach emptying or increased stomach acid production.

We already know that many many Veterans suffer from peripheral neuropathy. This was found to a linear dose response in the Ranch Hand studies as a stand alone and then not brought forward; and of course the NAS/IOM still denies this peripheral nerve damage.

In fact in the 2002 update the NAS/IOM had this to say:

The 2002 update concluded that there is inadequate or insufficient evidence to determine whether an association exists between the chemicals studied and chronic persistent peripheral neuropathy. In relation to acute and subacute transient peripheral neuropathy, the NAS concluded that there was limited or suggestive evidence of an association between chemical exposure and the disease, as stated in the update 1996 report. Update 2002 also indicated that if TCDD were associated with the development of transient acute and subacute peripheral neuropathy, the disorder would become evident shortly after exposure.

The NAS was unaware of any evidence that new cases developing long after service in Vietnam that could be attributed to herbicide exposure in Vietnam.

This is because the NAS/IOM operates under government constraints and goes more blind every two years, as it is time to put out their slanted and biased findings. Just as our congress does every election cycle in stating they support Veterans. All of it fictitious and sickening.

The Korean Agent Orange Impact study found this very painful nerve damage as a stand alone prevalent and relevant to Agent Orange at a p-value of 0.039 and related to service in Vietnam at a p-value of 0.0042. Of course, our VA and the NAS/IOM still deny this involvement.

The point is, you cannot have all this peripheral nerve damage without involvement in the autonomic nerves or even the central nervous system itself. I would seriously doubt, using any logic at all, that dioxin involvement already proven scientifically and mathematically in peripheral nerve damages is that specific to only affect part of the nervous system.

Autonomic nervous system would be involved with delayed stomach emptying and also insulin timing/glucose, which we also know is a big issue among Vietnam Veterans.

Regardless, if it was the involvement of B and T cells as some form of virus like response from the dioxin or autonomic nerve damage causing gastroparesis it is all associated with Service in Vietnam to multiple toxic chemical exposures.

In addition the VA and NAS/IOM state they are not looking for "cause and effect." In fact, I challenged the NAS/IOM on this fact and they categorically denied this fact.

While the Ranch Hand demands a liner dose response, which by default means you are looking for some form of "cause and effect" or at least to some level of cause and effect. By mandating this constraint many medical issues from Military Service in Vietnam that are "indeed found significant" go unreported; as planned by the entire government.

Remember in my previous discussions that prior to our toxic chemical legacy our government based Veterans compensations on "increased risk of incidence" or "significant increase" regardless of cause and effect, especially in an unknown issue as we had 40 years ago in types of toxic chemicals and the different forms of ingestions.

Logically, even "medical trends" such as showing up in those that served from Australia, New Zealand, Korea, US Forces should be looked at with great concern as an "increased risk of incidence."

Unfortunately, this has not happened by our government scientists and those scientists at the NAS/IOM who are contracted by our government with apparently some built in constraints; or the NAS/IOM is totally biased against Veterans as the committee they replaced. Just as that committee that operated from 1979 to 1991 that was disbanded in disgrace after review of their totally biased processes , the VACEH.

It seems the NAS/IOM itself is more tied to a VA mandated and controlled process than real scientific trends and medical issues.

Included in this comparison should be those medical issues from Times Beach, Mo where the government bought up a whole town for less exposures than most Veterans saw while at the same time they were denying Veterans any and all dioxin issues. Or the Love Canal, New York manifestations, or the Seveso, Italy dioxin incident.

Which if you compare the amount of toxic chemicals released in pounds and the amount of TCDD in Italy it is about 2% of what my gun park saw along the DMZ, not counting the drift from other firebases within the drift rate of about 11 miles. Yet, this area of Italy was declared a disaster area by national and international standards.

The Seveso, Italy dioxin accident has been characterized as a "National disaster." The actual 2,4,5-T release was estimated to be 100 grams (3.52 oz) to 20 kg (44.09 lbs) of dioxin was released into the air along with the estimated only 3,000 kg (6,613.9 pounds) of chemical that was released. The furthest contamination distance was 6 km (3.7 miles) to the south.

This absolutely pales in comparison to just the Rockpile FSB minimum of 506,000 pounds within 4.8 miles. (Not including the other firebase overlaps, the drift rates from the DMZ burm, tank spraying, tanker spraying, helicopter spraying, the additional toxic chemical poundage of Agents White and Blue.)

In fact, the Seveso Italy area was the perfect place to study these "increased risk of incidences" because of the way the exposure levels were broken out by exposure zones. Almost as if you would have a built in dose rate evaluation.

In reviewing the following peer reviewed article on, "THE SEVESO STUDIES ON EARLY AND LONG-TERM EFFECTS OF DIOXIN EXPOSURE: A REVIEW" I found many issues that Veterans have been submitting for and being turned down by our anti-Veteran Veterans Administration. Many of which were found in our allies as well as US troops. Many were found in the Ranch Hand transcripts and then not bought forward into the medical community.

I indicate "peer reviewed" because the NAS/IOM will not look at anything that has not been stalled for at least seven years in some peer review. Even though the Ranch Hand reports are peer reviewed and published in medical journals you can build a medical journal on dioxin exposures on <u>what they are not reporting</u>; as they seemed to "craft for publication" as opposed to medical science.

I will not go into the many things found significant in mortality and disease that we Veterans have been saying was associated and suffering from while the government stalls using the VA and the NAS/IOM.

What I did find that was interesting was obstructive air way diseases COPD, which the Ranch Hand found some of that. I was thinking why did the Koreans in their honest evaluation, that did not select by MOS only; not find this issue. Then realized that this is one medical area they did not evaluate. Had they done so; I can assure you they would not only have found it; but published the "unmodified results."

However, esophageal cancer mortality was one of them in the Seveso, Italy incident; especially in males. With a Risk Ratio (RR) of 1.8 and 95% Confidence Interval (CI) of 1.1-2.4. (17)

In fact the study concluded: (It should be noted that this was only a 15-year after the fact study.)

Increases in rectal cancers and increases in selected digestive digestive sites (liver and others).

It was theorized by some of the Ranch Hand scientists that one of the rationales as to why the Ranch Handers themselves were not showing more cancers was because of the non-cancerous mortality from

ischemic heart and vascular disease mortality. The men were not living long enough to show the increase in cancers. (2) Now that is a comforting thought for all our Vietnam Veterans left alive.

This seems to be very possibly a trend in the Seveso, Italy dioxin exposure also.

In a court document the following was submitted in evidence by Doctor Cate Jenkins of the EPA: (19)

Many Vietnam veterans have experienced more than one of the adverse health effects associated with dioxin. Such a coincidence of injuries increases the probability that the common casual factor of the multiple injuries was dioxin rather than two or more coincidental factors. In addition, a variety of human population exposed to dioxin have experienced these health effects (Vietnam veterans, farmers, forestry workers, residential populations in Missouri and Italy, and chemical production workers in the U.S. and other countries), thus establishing a firm basis for concluding that dioxin, and not some other unique factor related to service in Vietnam, was responsible for these health effects. Further, many Vietnam veterans and other populations exposed to dioxin have experienced dose-related increased rates of these adverse health effects, proving strong epidemiological evidence that the effects were caused by, not merely associated with, dioxin. In all cases, animals have experienced these same health effects when dioxin is administered in a controlled laboratory setting, thus providing a plausible biological basis for the health effects observed in humans.

The effects demonstrated by these new studies to be significantly associated with dioxin exposures include elevated cancers of all sites combined (representing a general carcinogenic effect of dioxin), as well as cancers of specific sites, namely: soft tissue sarcomas; non-Hodgkin's lymphoma; Hodgkin's disease; leukemias, lymphomas, and other hematologic cancers; respiratory system cancer; skin cancer; testicular cancer; and cancers of the brain, stomach, colon, rectum, prostate, hepatobiliary tract, pancreas, and kidney. One adverse effect in addition to cancer significantly associated with dioxin is organic nerve damage, including peripheral as well as central nervous system damage, and the severe consequences of central nervous system damage, such as suicide and fatal accidents, depression, anxiety, and other neuropsychological problems. Other adverse effects significantly associated with dioxin include reproductive abnormalities; immunological abnormalities; dermatologic abnormalities; hepatoxic effects; gastrointestinal ulcer; cardiovascular disorders; metabolic disorders such as porphyria cutanea tarda, thyroid dysfunction, diabetes, and altered lipid metabolism; and lung and thorax abnormalities.

SPECIFIC DIGESTIVE SYSTEM CANCERS:

STOMACH:

Dow Chemical Corporation Studies of Chlorophenol Production Workers. (19)

> The 1989 Dow Chemical Corporation analysis of employees exposed to dioxin found elevated stomach cancer deaths. When Dow directly compared "exposed" and "unexposed" workers, "exposed" workers were found to have statistically significant higher rates of stomach cancer.

NIOSH Study of Maine Paper Mill Workers (19)

> The June 1991 NIOSH study of paper mill workers in Maine found elevated stomach cancer deaths, although this elevation was not significant. The odds ratio for dying of stomach cancer, however, was found to increase in a statistically significant manner with increasing duration of employment at the paper mill, thus establishing a dose-response casual relationship between work at the paper mill and increased gastric cancer.

Significant Earlier Studies Showing Elevated Stomach Cancer (19)

Earlier studies have demonstrated statistically significant excesses of stomach cancer in populations exposed to dioxin. Three deaths from stomach cancer (0.6 expected) were found among workers exposed to a trichlorophenol process accident (p = 0.024 - 0.034).

An investigation of railway workers exposed to phenoxyacetic acid herbicides found an excess of stomach cancer deaths (odds ratio = 6.1; p< 0.05), for over 10 years latency from exposure.

Seveso, Italy 15 year mortality study shows stomach cancer incidence as high as RR = 1.3 and confidence interval (CI) .7-2.7. (17)

American Journal of Epidemiology reports on Seveso, Italy 20 year study reports an increase in all cancers. Stomach cancer was increased in the second decade. In the 10–14-year period, digestive cancer mortality was elevated, and stomach and liver cancer showed statistically significant increases. (20)

RECTAL:

In 1985, the Danish Cancer Society published a study examining the incidence of cancer in persons employed in manufacture of phenoxyacetic acid herbicides before 1982. <32> Cancer cases were identified for 3,390 males and 1,069 females. The highest observed statistically significant elevated risk was soft tissue sarcomas among males employed in any department at the two factories (relative risk = 2.72; 95% C.I. = 0.88 - 6.34). The two Danish factories included in the study used limited amounts of 2,4,5-T production took place, the predominant product being 4-chloro-ortho-cresol. In addition to elevated soft tissue sarcomas, this study also identified excess risk of lung, rectal, and cervical cancers. (19)

American Journal of Epidemiology reports on Seveso, Italy 20 year study reports an increase in all cancers with rectal cancer RR=2.4, 95% CI = 1.2, 4.6. (20) Deaths from rectal cancer were elevated, with a nearly twofold increase in zone B. (20)

All of these trends and factual data add up to one of three things:

One - Esophageal cancer as well as gastrointestinal cancers are associated to dioxin exposure.

Two - Esophageal cancer as well as gastrointestinal cancers are associated to Military Service In Vietnam; regardless of cause and effect or which one of the toxic chemicals caused the cancer.

Three - Esophageal cancer as well as gastrointestinal cancers are associated to Military Service In Vietnam.

This is especially true if it is Barrett's Esophagus or Esophageal Cancer that begins in cells that line internal organs. This is called "adenocarcinoma" and is not normally associated with drinking or smoking but from stomach acid or other forms of gastrointestinal stress. Or, as I have pointed out a dioxin or other toxic chemicals in Agent White or Agent Blue caused dysregulation of B and/or T cell activities identified by the Korean Study. (16) No different than an exposure to the Epstein Barr Virus which is associated to this form of cancer in nasal/oral cavity, pharynx (throat), and Esophageal cancers.

This rare form of cancers of this type should be associated to military service in Vietnam in toxic chemical environment; regardless of what specific body or internal organ site.

In the ADDENDUM, I review two cases that were approved as individual cases of Esophageal Cancer.

In the disapproved cases the majority of the BVA disapproval decisions are based on the fact the Veteran did not have the cancer in the service or didn't come down with within a year from discharge.

We are after all talking about the long term effects of these toxic chemicals (plural). DUH!

There is probably not even one toxic chemical that will cause a diagnosed cancer inside of one year from time of exposure. To take that much you would probably be dead already.

But when you have own legal system set up, granted by the congress then any dumb White House excuse for Veteran's denial will suffice. Not only suffice, but it is absolutely unchallengeable no matter how illegal it or dumb the decision.

Unless you consider the corrupt US Court of Appeals for Veterans as some sort of challenge. Over 17,000 cases heard and 13 positive decisions in favor of the Veteran or his widow.

This to the normal person would seem just a tad bit questionable. That is unless you serve in the United States Congress.

REFERENCES:

(1) Open letter to the Australian Government by Veteran Gary McMahon

(2) Ranch Hand Official Transcripts (Not the government redacted published reports)

(3) Taped interview by Moon Callison with Admiral Zumwalt on July 26th 1999 discussing his role in the Department of Veterans Affairs Report “Classified Confidential Status 1, not for Publication and Release to the General Public.” A report regarding adverse health affects from exposure to Agent Orange; Dated May 5 1990. (America’s Defense Monitor (ADM's) Moon Callison interviews the former Chief of Naval Operations, for "Environmental Impact of War").

(4) Department of Veterans Affairs Report “Classified Confidential Status 1, not for Publication and Release to the General Public.” A report regarding adverse health affects from exposure to Agent Orange; Dated May 5 1990, page 37.

(5) Department of Veterans Affairs Report “Classified Confidential Status 1, not for Publication and Release to the General Public.” A report regarding adverse health affects from exposure to Agent Orange; Dated May 5 1990, page 23 and page 24.

(6) Department of Veterans Affairs Report “Classified Confidential Status 1, not for Publication and Release to the General Public.” A report regarding adverse health affects from exposure to Agent Orange; Dated May 5 1990, page 24.

(7) Department of Veterans Affairs Report “Classified Confidential Status 1, not for Publication and Release to the General Public.” A report regarding adverse health affects from exposure to Agent Orange; Dated May 5, 1990

(8) March of 2000, House of Representatives, Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform, Washington, DC, ; Oversight review of the Ranch Hand Study.

(9) Vietnam Veterans of America statement regarding the law suit against VA individuals.

(10) New York Times article titled, "Chemicals Sickened '91 Gulf War Veterans, Latest Study Finds." October 14, 2004.

(11) Letter from Daniel Teitelbaum, M.D., P.C. to Admiral E.R. Zumwalt, Jr. (April 18, 1990).

12) Agency for Toxic Substances and Disease Registry.

(13) Recognition and Management of Pesticide Poisoning, 5th edition, U.S. EPA, Chapter 14.

(14) House Report HR 101-672.

(15) Re-Evaluation of Dioxin; A Presentation by Linda Birnbaum, Director Environmental Toxicology Division U.S. Environmental Protection Agency (EPA); To the 102nd Meeting of the Great Lakes Water Quality Board, Chicago, Illinois.

(16) Immunotoxicological Effects of Agent Orange Exposures to the Vietnam War Korean Veterans accepted May 28, 2003. Industrial Health 2003, 41, 158-166

(17) Sort-Long Term Morbidity and Mortality in the Population Exposed to Dioxin after the "Seveso Accident - Industrial Health 2003, 41, 127-138

(18) Impact of Agent Orange Exposures among Korean Vietnam Veterans accepted May 28, 2003, Industrial Health 41, 149-157

(19) IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK SHIRLEY IVY, Individually and as Representative of the Estate of DONALD IVY, et al.
Plaintiffs, CV-89-03361 (E.D.N.Y.) (JBW) v. [B-89-0059-CA (E.D.TEX.)] DIAMOND SHAMROCK CHEMICALS COMPANY, et al. SEP 3, 1991

(20) American Journal of Epidemiology Vol. 153, No. 11 : 1031-1044 (Health Effects of Dioxin Exposure: A 20-Year Mortality Study)

ADDENDUM:

Comparison of data to sample cases of Esophageal Cancers that were approved by the VA on an individual basis associated to dioxin alone.

SAMPLE 1

Citation Nr: 9914625

Decision Date: 05/24/99 Archive Date: 06/07/99

DOCKET NO. 98-01 854

On appeal from the Department of Veterans Affairs Regional Office in Boise, Idaho

THE ISSUES

1. Entitlement to service connection for esophageal cancer for purposes of accrued benefits.

2. Entitlement to service connection for metastasized liver and lymph node cancer for purposes of accrued benefits.

3. Entitlement to service connection for the cause of the veteran's death.

REPRESENTATION

Appellant represented by: Veterans of Foreign Wars of the United States

ATTORNEY FOR THE BOARD

K. Conner, Associate Counsel

INTRODUCTION

The veteran had active service from June 1969 to July 1973.

This matter comes to the Board of Veterans' Appeals (Board) from a September 1997 rating decision of the Department of Veterans Affairs (VA) Boise Regional Office (RO). This matter was previously before the Board in October 1998, at which time the issue of service connection for post-traumatic stress disorder (PTSD) for purposes of accrued benefits was denied. The issues of service connection for esophageal, liver and lymph node cancer for purposes of accrued benefits and the cause of the veteran's death were remanded for additional development of the evidence.

FINDINGS OF FACT

1. All relevant evidence necessary for an equitable disposition of the appellant's appeal has been obtained by the RO.

2. Based on his service in the Republic of Vietnam during the Vietnam era and his military occupational specialty (field radio operator), the veteran was exposed to herbicidal agents in service, including Agent Orange.

3. The record contains clinical evidence showing that the veteran's esophageal cancer, which metastasized to his liver and lymph nodes, was incurred as a result of exposure to Agent Orange in service.

4. The cause of the veteran's death was esophageal carcinoma with liver metastasis.

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2. Based on his service they have concluded that the veteran, in this case a Marine, was exposed to herbicidal agents, including Agent Orange. So this court is allowed to use the undefined term "herbicidal agents" rather than state the facts of Agents Orange, White, and Blue. Knowing this Veteran was a Marine and knowing where the Marines operated within Vietnam itself; it is a fact of record this Marine was exposed to copious amounts all three major herbicides of Agents Orange, White, and Blue.

One would have to wonder why Agent White was not mentioned specifically since in TECHNICAL/MEDICAL above it is clearly found the toxic chemicals used in the herbicide Agent White are noted for causing increased mortality from cancers of the esophagus, oral cavity, and pharynx (throat).

One would have to wonder why Agent Blue was not mentioned specifically since in TECHNICAL/MEDICAL above it is clearly found the toxic chemicals used in the herbicide Agent Blue are noted for causing - GI effects may also include inflammation, vesicle formation, and eventual sloughing (shedding) of the mucosa in the mouth, pharynx, and esophagus.

3. The record indicates clinical evidence showing that the veteran's esophageal cancer, which metastasized to his liver and lymph nodes, was incurred as a result of exposure to Agent Orange in service.

This conclusion is moot at best, even though it was a positive outcome for the Veteran's Widow.

You can have clinical evidence that the esophageal cancer was associated to only Agent Orange. How is this medically possible?

We do have the Seveso, Italy study findings that show a increase risk of of Esophageal Cancers at RR = 1.8 but to state that there is medical evidence to only Agent Orange when they really mean "only Dioxin" is a scientific feat that no other scientists in the world have been able to accomplish.

More to the point; what should have been stated:

Based on the scientific findings from Seveso, Italy and based on the known chronic and acute exposure medical outcomes already established decades ago from the other toxic chemicals the Marine was also exposed to, should have concluded:

That the Marines Esophageal Cancer was "more likely as not" caused by his exposures to the "multiple toxic chemicals" during his wartime service in the toxic chemical environment in the Republic of Vietnam.

This should be the conclusion for any Vietnam Veteran that develops Barrett's Esophagus and/or Esophageal Cancer and should be automatically "Service Connected."

CONCLUSIONS OF LAW

1. Affording the appellant the benefit of the doubt, the veteran's esophageal, liver, and lymph node cancer was incurred in active service and accrued benefits, based on service connection for esophageal, liver, and lymph node cancer, are payable. 38 U.S.C.A. §§ 1110, 5107, 5121 (West 1991); 38 C.F.R. §§ 3.303, 3.310, 3.1000 (1998).

2. A disability incurred in service caused or contributed substantially or materially to the veteran's death. 38 U.S.C.A. §§ 1110, 1310, 5107(a) (West 1991); 38 C.F.R. §§ 3.303, 3.312 (1998).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

I. Factual Background

The post-service medical evidence shows that in November 1996, the veteran sought treatment for severe epigastric pain which he indicated had been present for the past month. He reported a history of peptic ulcer disease and reflux, as well as a family history of gastric cancer (maternal grandmother), but denied symptoms of heartburn in the past three years. A barium swallow test was performed and revealed a tumor at the gastroesophageal junction. The veteran was hospitalized later that month for an esophagogastroduodenoscopy with biopsy, which revealed a malignant tumor of the distal esophagus.

The examiner indicated that, with the veteran's history of reflux, "one might raise the question of a short segment Barrett's that has developed adenocarcinoma but there is no gross evidence of Barrett's esophagus." Shortly thereafter, a CT scan of the lower chest and upper abdomen showed metastatic spread to the liver as well as probably the celiac nodes.

The VA examiner states there is no gross evidence of Barrett's esophagus.

After reviewing many many cases in this "so called legal system" set up for the Veterans as some kind of reward by our congress; the anti-veteran bias is so obvious in reviewing these cases. Any VA examiner can make descriptive statements like, "no gross evidence of Barrett's esophagus", then this is now by default considered fact of absolutely no (zero) evidence of any association to Barrett's Esophagus.

In support of her claim, the appellant submitted a December 1997 letter from one of the veteran's treating physicians.

In his letter, the physician indicated that the veteran "did not have any significant risk factors for esophageal cancer" as he was not a smoker or a drinker and he had not had a past history of peptic ulcer disease or chronic reflex or dyspepsia.

"There was no family history of esophageal or stomach cancer. Of interest is that [the veteran] did partake in the Vietnam conflict and states that he was exposed to Agent Orange."

The physician indicated that, while he was not an expert in cancer, he had consulted with a private hematologist/oncologist who felt that the veteran's cancer was very rare, given his lack of definable risk factors. As such, he indicated that, "I question if there might be some relationship between [the veteran's] aggressive cancer and his past exposure to Agent Orange."

Also submitted by the appellant was a January 1999 letter from another private physician, a specialist in gastroenterology, who indicated that the etiology of the veteran's adenocarcinoma was not classically defined, although he did have long existing reflux symptoms.

He noted that the appellant had some concern that the veteran's Agent Orange exposure may have played a role in the development of his esophageal cancer. In that regard, he noted that, since there were no available data that Agent Orange can or cannot cause esophageal cancer, it was possible that the veteran's esophageal cancer was at least as likely as not related to his exposure to Agent Orange in service, rather than to any other cause.

Three issues:

While that statement was only true during that time period. The long term mortality Seveso, Italy study does conclude that significant increased mortality from Esophageal Cancer and a relationship of dioxin exposures, does indeed exist.

Thanks to our government and especially the "Veterans Administration" this Marine, more than likely, had no idea of the other toxic chemicals which he was exposed. I have found this true in discussing the toxic chemicals with both Army and Marine Veterans. Many who were on the same Marine gun park I was on; and they have not a clue as to the different toxic chemicals they were exposed.

Once again, thanks to our government and especially the "Veterans Administration" this Marine, more than likely, had no idea of the other toxic chemicals which he was exposed. Therefore, he had no way of conveying to his practicing civilian medical doctor of the total toxic chemicals he was exposed. In addition, the practicing civilian medical doctor would have no idea on his own thanks to the medical information void created by the Veterans Administration, based on White House philosophy. I have found this true in discussing the toxic chemicals with my own civilian doctor that he had no clue to the other toxic chemicals associated.

In a February 1999 medical opinion, a VA physician indicated that longstanding gastroesophageal reflux disease with progression into dysplasia and adenocarcinoma was well recognized. He noted that while multiple cancers and sarcomas were now accepted by VA as related to Agent Orange exposure, esophageal cancers with metastases to the regional nodes and liver was not currently accepted by VA as etiologically related. He noted that while a feasibility study related to a research initiative had been completed, the study of long-term health effects due to Agent Orange would not be released until the end of the year 2001. As such, he indicated that "at present adenocarcinoma while related to longstanding gastroesophageal reflux disease is not accepted in its etiology as related to agent orange exposure at this time."

Once again, thanks to our government and especially the "Veterans Administration" even our practicing VA physicians do not have any knowledge of the other toxic chemicals or at least they feign they do not.

In several instances, I mentioned the other toxic chemicals to my VA physicians and clinical specialists and they indicated they have never heard of these other herbicides; nor what was in them. In fact, when I mentioned Agent Blue and the toxic chemicals the retort was; MY GOD, that is toxic chemical that is noted for its "neurotoxicity effects."

II. Law and Regulations

To establish service connection for the cause of the veteran's death, the evidence must show that a

disability incurred in or aggravated by service either caused or contributed substantially or materially to cause death. 38 U.S.C.A. § 1310; 38 C.F.R. § 3.312 (1998). For a service- connected disability to be the cause of death, it must singly, or with some other condition, be the immediate or underlying cause, or be etiologically related. For a service-connected disability to constitute a contributory cause, it is not sufficient to show that it casually shared in producing death, but rather it must be shown that there was a causal connection. Id.

Service connection may be granted for disability resulting from disease or injury incurred in or aggravated by wartime service. 38 U.S.C.A. § 1110. Additionally, service connection may be granted for disability which is proximately due to or the result of a service-connected disease or injury. 38 C.F.R. § 3.310 (1998). Service connection may also be granted for any disease diagnosed after discharge when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d) (1998).

A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era, and has a disease listed at 38 C.F.R. § 3.309(e), shall be presumed to have been exposed during such service to a herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. 38 C.F.R. § 3.307(a)(6)(iii) (1998).

The U.S. Court of Appeals for Veterans Claims (Court) has recently held that under the plain language of 38 U.S.C. § 1116(a)(3) and 38 C.F.R. § 3.307(a)(6)(iii), the incurrence element of a well-grounded claim is not satisfied where the veteran has not developed a condition enumerated in either 38 U.S.C. § 1116(a) or 38 C.F.R. § 3.309(e). In other words, both service in the Republic of Vietnam during the designated time period and the establishment of one of the listed diseases is required in order to establish entitlement to the in-service presumption of exposure to an herbicide agent. McCartt v. West, 12 Vet. App. 164 (1999).

In this case, although the veteran's primary cancer, esophageal cancer, is not one of the cancers listed in 38 C.F.R. § 3.309(e), the Board nonetheless concludes that the evidence shows that he was likely exposed to Agent Orange in service. First, it is observed that his DD Form 214 shows that he served in the U.S. Marine Corps in Vietnam during the Vietnam era. He was awarded numerous decorations, including the Vietnam Gallantry Cross and Combat Action Ribbon. Moreover, and most probative, his military occupational specialty was field radio operator. Given the nature of his military occupational specialty and his service in Vietnam during the Vietnam era, the Board finds that he was likely exposed to Agent Orange in service. See also 38 U.S.C.A. § 1154(b) (providing that with combat veterans, VA shall accept as sufficient proof of service-connection satisfactory lay or other evidence of service incurrence, if consistent with the circumstances, conditions, or hardships of such service).

If a veteran was exposed to a herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of 38 U.S.C.A. § 1116, 38 C.F.R. § 3.307(a)(6)(iii) are met, even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of 38 U.S.C.A. § 1113; 38 C.F.R. § 3.307(d) are also satisfied: chloracne or other acneform diseases consistent with chloracne, Hodgkin's disease, multiple myeloma, non-Hodgkin's lymphoma, acute and subacute peripheral neuropathy, porphyria cutanea tarda, prostate cancer, respiratory cancers (cancer of the lung, bronchus, larynx, or trachea), and certain specified soft-tissue sarcomas. 38 C.F.R. § 3.309(e) (1998).

The Secretary has also determined that there is no positive association between exposure to herbicides and any other condition for which he has not specifically determined a presumption of service connection is warranted. See Disease Not Associated With Exposure to Certain Herbicide Agents, 59 Fed. Reg. 341-46 (Jan. 4, 1994).

In a recent opinion, the VA General Counsel held that presumptive service connection may not be established under 38 U.S.C. § 1116 and 38 CFR § 3.307(a) for a cancer listed in 38 CFR 3.309(e) as being associated with herbicide exposure, if the cancer developed as the result of metastasis of a cancer which is not associated with herbicide exposure. VA O.G.C. Prec. Op. No. 18-97, 62 Fed. Reg. 37,954 (1997); see also Darby v. Brown, 10 Vet. App. 243, 245 (1997). Evidence sufficient to support the conclusion that a cancer listed in section 3.309(e) resulted from metastasis of a cancer not

associated with herbicide exposure will constitute "affirmative evidence" to rebut the presumption of service connection for the purposed of 38 U.S.C. § 1113(a) and 38 CFR § 3.307(d). Id. The Board is bound by this opinion. 38 U.S.C.A. § 7104.

Notwithstanding the foregoing, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has determined that the Veteran's Dioxin and Radiation Exposure Compensation Standards (Radiation Compensation) Act, Pub. L. No. 98-542, § 5, 98 Stat. 2725, 2727-29 (1984) does not preclude a veteran from establishing service connection with proof of actual direct causation. Combee v. Brown, 34 F.3d 1039 (Fed. Cir. 1994). The rationale employed in Combee also applies to claims based on exposure to Agent Orange. Brock v. Brown, 10 Vet. App. 155 (1997).

The standard of proof to be applied in decisions on claims for VA benefits is set forth in 38 U.S.C.A. § 5107(b). Under that provision, a claimant is entitled to the "benefit of doubt" when there is an approximate balance of positive and negative evidence. The preponderance of the evidence must be against the claim for benefits to be denied. When a claimant seeks benefits and the evidence is in relative equipoise, the law requires that the claimant prevail. See Gilbert v. Derwinski, 1 Vet. App. 49 (1990).

III. Analysis

Initially, it is noted that at the time of his death, the veteran had a pending claim of service connection for esophageal cancer with liver and lymph node metastases. As a matter of law, veteran's claims do not survive their deaths. Vda de Landicho v. Brown, 7 Vet. App. 42, 47 (1994).

However, the provisions of 38 U.S.C.A. § 5121 "set forth a procedure for a qualified survivor to carry on, to the limited extent provided for therein, a deceased veteran's claim for VA benefits by submitting an application for accrued benefits within one year after the veteran's death." Vda. de Landicho, 7 Vet. App. at 47. Specifically, section 5121 provides that periodic monetary benefits to which a veteran was entitled on the basis of evidence in the file at date of death, and due and unpaid for a period of not more than one year prior to death, may be paid to the living person first listed as follows: (1) His spouse, (2) his children (in equal shares), (3) his dependent parents (in equal shares). 38 U.S.C.A. § 5121.

In this case, the appellant's claim for accrued benefits was received at the RO in August 1997, within one year of the veteran's death. As such, the Board will address the merits of the claims of service connection for esophageal cancer with liver and lymph node metastases for purposes of accrued benefits.

As set forth above, because esophageal carcinoma is not among the diseases listed at 38 C.F.R. § 3.309(e), the appellant is not entitled to the legal presumption that this disorder is etiologically related to exposure to herbicide agents in service. However, that fact does not preclude her from establishing service connection with proof of actual, direct causation. See Combee v. Brown, 34 F.3d 1039 (Fed.Cir. 1994); Brock v. Brown, 10 Vet. App. 155 (1997).

In that regard, the Board notes that she has submitted opinions from two physicians who tend to link the veteran's esophageal cancer to his exposure to Agent Orange in service. In a December 1997 statement, a physician indicated that "there might be some relationship between [the veteran's] aggressive cancer and his past exposure to Agent Orange." In a January 1999 opinion, another physician indicated that it was possible that the veteran's esophageal cancer was at least as likely as not related to his exposure to Agent Orange in service, as opposed to any other cause.

On the other hand, the record also contains a February 1999 opinion from a VA examiner to the effect that adenocarcinoma of the esophagus, while related to longstanding gastroesophageal reflux disease, is not currently accepted by VA in its etiology as related to Agent Orange exposure.

On the basis of this competent medical evidence, the Board finds that the positive evidence in favor of allowance is at least equal to the negative evidence against an allowance. Therefore, with an approximate balance of positive and negative evidence regarding the merits of her claim, the appellant must be accorded the benefit of the doubt. 38 U.S.C.A. § 5107(b); Gilbert, 1 Vet. App. at 53-56 (1990). Thus, service connection for esophageal cancer for accrued benefits purposes is granted.

Inasmuch as the Board has determined that service connection is appropriate for esophageal cancer, service connection for metastasized liver and lymph node cancer is likewise warranted on a secondary basis. 38 C.F.R. § 3.310(a). Accordingly, in light of the Board's decision to grant service connection for these disabilities, and given the cause of his death as listed on his death certificate, it is clear that service connection for the cause of the veteran's death is now warranted. 38 U.S.C.A. § 1310; 38 C.F.R. § 3.312 (1998).

ORDER

Service connection for esophageal cancer with liver and lymph node metastases (for purposes of accrued benefits) is granted.

Service connection for the cause of the veteran's death is granted.

J.F. GOUGH
Member, Board of Veterans' Appeals

Citation Nr: 0413922
Decision Date: 05/28/04 Archive Date: 06/02/04

DOCKET NO. 04-17 060) DATE
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On appeal from the
Department of Veterans Affairs Regional Office in San Diego, California

THE ISSUE

Entitlement to service connection for adenocarcinoma of the esophagus.

REPRESENTATION

Appellant represented by: California Department of Veterans Affairs

ATTORNEY FOR THE BOARD

J. Connolly Jevtich, Counsel

INTRODUCTION

The veteran served on active duty from January 1967 to October 1970.

This case comes before the Board of Veterans' Appeals (the Board) on appeal from an April 1998 rating decision of the San Diego, California, Department of Veterans Affairs (VA) Regional Office (RO)

FINDINGS OF FACT

1. The veteran had service in the Republic of Vietnam during the Vietnam era and is presumed to have been exposed to Agent Orange during that time.

2. The veteran's adenocarcinoma of the esophagus is related to service.

CONCLUSION OF LAW

Adenocarcinoma of the esophagus was incurred during active service. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. §§ 3.303, 3.304 (2003).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

There has been a significant change in the law during the pendency of this appeal with the enactment of the Veterans Claims Assistance Act (VCAA). 38 U.S.C.A. § 5100, 5102, 5103, 5103A, 5106, 5107, 5126 (West 2002). To implement the provisions of the law, the VA promulgated regulations at 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a)). The amendments became effective November 9, 2000, except for the amendment to 38 C.F.R. § 3.156(b) which became effective August 29, 2001. Except for the amendment to 38 C.F.R. § 3.156(a), the second sentence of 38 C.F.R. § 3.159(c), and 38 C.F.R. § 3.159(c)(4)(iii), VA stated that "the provisions of this rule merely implement the VCAA and do not provide any rights other than those provided in the VCAA." 66 Fed. Reg. 45,629. Accordingly, in general where the record demonstrates that the statutory mandates have been satisfied, the regulatory provisions likewise are satisfied. The Act and implementing regulations eliminate the concept of a well-grounded claim, redefine the obligations of VA with respect to the duty to assist, and supersede the decision of the United States Court of Appeals for Veterans Claims in Morton v. West, 12 Vet. App. 477 (1999), withdrawn sub nom. Morton v. Gober, 14 Vet. App. 174 (per curiam order) (holding that VA cannot assist in the development of a claim that is not well grounded).

First, VA has a duty to notify the veteran and his representative, if represented, of any information and evidence needed to substantiate and complete a claim. 38 U.S.C.A. §§ 5102, 5103. Second, VA has a duty to assist the veteran in obtaining evidence necessary to substantiate the claim. 38 U.S.C.A. § 5103A. The Board is, at this time, granting the veteran's claim; thus any deficiencies in this case as to VCAA are harmless and nonprejudicial.

Service connection may be granted for disability resulting from disease or injury incurred in or aggravated by service. 38 U.S.C.A. § 1110. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word "chronic." Continuity of symptomatology is required where the condition noted during service is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim. 38 C.F.R. § 3.303(b) (2003).

A chronic, tropical, or prisoner-of-war related disease, or a disease associated with exposure to certain herbicide agents, listed in 38 C.F.R. § 3.309 will be considered to have been incurred in service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than the ones listed in 38 C.F.R. § 3.309(a) will be considered chronic. 38 U.S.C.A. §§ 1101, 1112, 1113, 1116; 38 C.F.R. § 3.307(a).

A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975 shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. The last date on which such a veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975. "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. 38 U.S.C.A. § 1116(f); 38 C.F.R. § 3.307(a)(6)(iii).

If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of 38 U.S.C.A. § 1116, 38 C.F.R. § 3.307(a)(6)(iii) are met, even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of 38 U.S.C.A. § 1113; 38 C.F.R. § 3.307(d) are also satisfied: chloracne or other acneform diseases consistent with chloracne, Hodgkin's disease, multiple myeloma, non-Hodgkin's lymphoma, acute and subacute peripheral neuropathy, porphyria cutanea tarda, prostate cancer, respiratory cancers (cancer of the lung, bronchus, larynx, or trachea), soft-tissue sarcomas (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma), diabetes, and chronic lymphocytic leukemia. 38 C.F.R. § 3.309(e).

Further, VA regulation provides that with chronic disease shown as such in service (or within the presumptive period under 38 C.F.R. § 3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word "chronic." When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim. 38 C.F.R. 3.303(b).

Service connection may be granted for any disease diagnosed after service when all the evidence establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d); Combee v. Brown, 34 F.3d 1039, 1042 (Fed. Cir. 1994).

A claim for service connection requires competent evidence of a current disability; proof as to incurrence or aggravation of a disease or injury in service, as provided by either lay or medical evidence, as the situation dictates; and competent evidence as to a nexus between the in-service injury or disease and the current disability. Cohen v. Brown, 10 Vet. App. 128, 137 (1997); Layno v. Brown, 6 Vet. App. 465 1994).

The United States Court of Appeals for the Federal Circuit has determined that a claimant is not precluded from establishing service connection with proof of direct causation. Combee; Ramey v. Brown, 9 Vet. App. 40, 44 (1996), aff'd sub nom. Ramey v. Gober, 120 F.3d 1239 (Fed. Cir. 1997), cert. denied, 118 S.Ct. 1171 (1998). See also Brock v. Brown, 10 Vet. App. 155, 160-61 (1997).

The veteran served on active duty from January 1967 to October 1970. His service record confirms service in Vietnam. Thus, exposure to Agent Orange is presumed. It is further noted that the veteran served in combat and is entitled to consideration of 38 U.S.C.A. § 1154(b).

The veteran was initially diagnosed as having esophageal cancer in October 2002.

The veteran maintains that his esophageal cancer is a result of exposure to Agent Orange during his service in Vietnam.

Esophageal cancer/adenocarcinoma of the esophagus is not one diseases listed at 38 C.F.R. § 3.309(e).

Thus, the Board will consider if direct service connection is warranted.

In support of his claim, the veteran has submitted two letters from his private treating physician, J. W., who is a diplomate in internal medicine, medical oncology, and hematology, as well as a March 2004 letter of another private treating physician, Dr. D. B., another of his treating physicians who is an oncologist specialist.

In the first letter of Dr. J. W., dated in January 2003. Dr. J. W. stated that the veteran had been under his care for esophageal cancer since November 2002. He indicated that the veteran had no known risk factors for the development of his neoplasm beyond his exposure to Agent Orange during service. In support of his opinion, Dr. J. W. submitted medical literature which addressed the health effects of dioxin exposure in a 20-year mortality study. In reviewing this literature, the physician found that there was an increased relative risk of "other digestive cancers." Although the study did not list these other types of cancers, he concluded that the study factored out stomach, cancer, colon, rectum, hepabillary, liver, and pancreatic cancer. The Board notes that in viewing the study, these types of cancers were listed under the heading of "digestive cancers" and were listed individually. Also listed under "digestive cancers" was a category entitled "other digestive." Dr. J. W. opined that this other category, after factoring out the enumerated cancers, left only esophageal and small bowel neoplasms unaccounted for; thus, they were the cancers in the catchall category. Dr. J. W. stated that he had not been able to find a specific reference to adenocarcinoma of the esophagus and Agent Orange due to the relatively rare occurrence of this cancer as compared to breast, lung, colon, and rectal cancers. However, with the referenced medical literature and the lack of a specific study, it was his opinion that there was an association between esophageal cancer and Agent Orange. He stated that it was his belief that Agent Orange was at least a factor or possibly the cause of the veteran's esophageal cancer.

In his second letter, dated in March 2003, Dr. J. W. expanded on his earlier letter and addressed the veteran's documented history of cigarette smoking and any etiological relationship to his development of esophageal cancer. Dr. J. W. stated that there was a strong association with tobacco use and alcohol use and the development of squamous cell cancer of the esophagus, however, not with adenocarcinoma, which is the type of cancer from which the veteran suffers. Dr. J. W. stated that in patients with Barrett's esophagus, there might be an increased risk with tobacco, but the veteran did not have a preexisting history of Barrett's esophagus. In sum, the physician indicates that as the veteran did not have a preexisting history of Barrett's esophagus, since most cases do not have smoking as a risk factor, and because of the Agent Orange components have been shown to increase adenocarcinoma of the digestive tract, the physician felt that it was likely that the veteran's exposure to Agent Orange was a risk factor or causative factor in his esophageal cancer.

In April 2003, the veteran was afforded a VA examination. The examiner reviewed the veteran's history and took note of his past exposure to Agent Orange as well as tobacco use. The examiner indicated that he had read literature with regard to Agent Orange exposure. The examiner also indicated that carcinoma of the esophagus, adeno or squamous, was not listed as one of the Agent Orange diseases. However, the examiner stated that in reviewing the article referenced by Dr. J. W., there was discussion about the rate possibility of cancers of the esophagus. Usually cancers of the esophagus are squamous cell carcinoma and related to smoking and alcohol use, rarely is the carcinoma adenocarcinoma of the esophagus, which is often related to Barrett's esophagitis which is due to reflux. The examiner noted that the veteran did not seem to have reflux. The examiner indicated that the article did say that gastrointestinal cancers are rare and esophagus cancer is very rare. The examiner stated that the Agent Orange protocol says that carcinoma of the esophagus is not an accepted diagnosis from Agent Orange, it seemed as likely as not that this carcinoma of the esophagus could be related to Agent Orange.

In July 2003, the veteran's case was referred to the Under Secretary for Health. The Chief Public Health and Environment Hazards Officer provided a statement. She noted that the veteran had served in Vietnam in 1969 and 1970. She stated that he subsequently was diagnosed with adenocarcinoma of the esophagus arising in the milieu of Barrett's esophagus in 2002. She related that the most recent general Institute of Medicine (IOM) national Academy of Sciences report of herbicides used in Vietnam did not specifically address the question of possible association between exposure to herbicides and specifically esophageal cancer. She stated that this indicated that the information obtained from their extensive review of all available scientific and medical literature, to include the medical literature cited above,

did not permit the IOM to assign this disorder to one of its specific categories. Moreover, the IOM committee reviewed the article cited by Dr. J. W., and apparently esophageal carcinoma is not included with "other digestive" cancers in that paper's analysis. The VA physician indicated that a lot of weight was being given to the IOM findings on the health effects from exposure to herbicides in Vietnam. Therefore, at this time, she could not say that it was likely or at least as likely as not that esophageal cancer was the result of exposure to herbicides used in Vietnam.

In March 2004, Dr. D. B., stated that prior to his diagnosis of adenocarcinoma of the esophagus, the veteran did not have a history of gastrointestinal problems including regurgitation, heartburn, nausea, vomiting, or early satiety. Dr. D. B. noted that the veteran had a history of exposure to Agent Orange. He stated that the veteran had very little of the typical symptoms associated with the development of adenocarcinoma of the esophagus such as reflux symptoms, indigestion, and only presented with late symptoms of dysphasia. The physician opined that it seemed reasonable that his esophageal adenocarcinoma related to his past Agent Orange exposure. The physician explained that while the veteran had a history of tobacco use, this exposure was a significant risk factor for squamous cell carcinoma of the esophagus, not adenocarcinoma of the esophagus; thus, it was unlikely that his social habits had any relation to the development of adenocarcinoma of the esophagus. Dr. D. B. concluded that the veteran had known Agent Orange exposure. Agent Orange exposure was related to adenocarcinoma of the digestive tract. The veteran had none of the usual/typical risk factors of adenocarcinoma of the esophagus. He stated that it was reasonable to conclude that his Agent Orange exposure greatly increased his risk of developing adenocarcinoma of the esophagus.

The Board disagrees with the AOJ's assessment in this case. While the AOJ states that the doctors did not adequately discuss or evaluate the veteran's other risk factors in developing his cancer, the Board finds that this is not the case. The private oncologists and the VA examiner who examined the veteran did in fact consider the veteran's risk factors and discussed them in each report. It was noted by all three physicians that the veteran had a history of smoking, but since he had adenocarcinoma and not squamous cell carcinoma, this was not felt to be an etiological factor. In addition, Barrett's esophagus was specifically ruled out. Thus, the veteran's various risk factors were adequately explored.

The United States Court of Appeals for the Federal Circuit Court has stated that service connection can be granted on a direct basis, not just a presumptive basis. As such, other diseases, besides those deemed by VA to be presumptive diseases may be service-connected. In order for them to be service-connected, there must be competent evidence establishing a nexus to service. The fact that a condition is not a presumptive disease is not relevant.

In this case, Dr. J. W. made such an assessment and opined that the medical literature that he submitted did support his conclusion. Dr. J. W. discussed his supporting medical literature. In reviewing this literature, the physician found that there was an increased relative risk of "other digestive cancers." He addressed the fact that the study did not specifically list adenocarcinoma of the esophagus. However, he concluded that since the study factored out stomach, cancer, colon, rectum, hepabillary, liver, and pancreatic cancer, the "other digestive" category included esophageal and small bowel neoplasms. Dr. J. W. is an expert in oncology. He is competent to make that assessment. His opinion is confirmed by Dr. D. B. and the VA examiner.

The VA examiner addressed the fact that the article did say that gastrointestinal cancers are rare and esophagus cancer is very rare. Likewise, Dr. J. W. stated that the veteran's type of cancer was rare as compared to breast, lung, colon, and rectal cancers. Dr. D. B., who did not appear to rely on the referenced study, opined that the veteran had none of the usual/typical risk factors of adenocarcinoma of the esophagus. In essence, he indicated that the veteran's sole risk factor was his Agent Orange exposure.

Thus, the Board does not agree with the AOJ with regard to those arguments. The Board finds that the three supporting medical opinions are competent and supported by medical literature. The two private physicians are the veteran's treating oncologists and are specialists in their field of medicine. In addition, the VA examiner also had an opportunity to examine the veteran. They are all in agreement that the veteran's Agent Orange exposure played a role in his development of adenocarcinoma of the esophagus. They have supported their opinions, as noted above. However, a question remains as to whether those

positive opinions are outweighed by the negative opinion of the Chief Public Health and Environment Hazards Officer.

In reviewing this opinion, the Board notes that the Chief Public Health and Environment Hazards Officer's opinion is also competent. However, in this particular case, her opinion is outweighed. First of all, she stated that the veteran had been diagnosed with adenocarcinoma of the esophagus arising in the milieu of Barrett's esophagus in 2002. The veteran's adenocarcinoma of the esophagus has not been found to have any relationship to Barrett's esophagus and has been deemed by the treating oncologists to be without similar symptoms. The treating oncologists discussed such in detail. The veteran has not had the typical symptoms, his symptoms are not those of Barrett's esophagus or having similarity to such. Second, she stated that the most recent IOM report did not specifically address the question of possible association between exposure to herbicides and specifically esophageal cancer. She indicated that the reason was that their extensive review of all available scientific and medical literature, to include the cited medical literature, did not permit the IOM to assign this disorder to one of its specific categories. The Board has recognized that esophageal cancer is not in fact a presumptive disorder. However, the treating oncologists and the VA examiner have indicated that the veteran's specific type of cancer is so rare that there are insufficient studies. This is not discounted by the Chief Public Health and Environment Hazards Officer. As noted, she stated that the most recent IOM report did not specifically address the question of possible association between exposure to herbicides and specifically esophageal cancer. However, it was her opinion that such an omission amounted to that disease having been ruled out as being associated by the IOM committee as being associated with dioxin exposure. The three other physicians raise the possibility that the omission does not amount to an exclusion, but rather is based on the rare occurrences of this type of cancer and lack of studies in that regard. It was pointed out that while it is not among the recognized types of cancers, the veteran's cancer is very unusual and atypical. The three other physicians felt that in this particular case, the fact that there was not a specific study on esophageal cancer was not determinative. It did not mean that there was no relationship between adenocarcinoma and Agent Orange exposure.

In sum, the Chief Public Health and Environment Hazards Officer stated that she could not say that it was likely or at least as likely as not that esophageal cancer was the result of exposure to herbicides used in Vietnam. However, the Board finds it significant to note that she was requested to state whether it was likely, as likely as not, or unlikely, that the veteran's esophageal cancer was related to Agent Orange. While, she indicated that she could not say that it was likely or at least as likely as not that esophageal cancer was the result of exposure to herbicides used in Vietnam, she did not state that it was unlikely or rule out that possibility. She basically indicated that it was not currently recognized by IOM and that prevented her from stating that it was likely or at least as likely as not that esophageal cancer was the result of exposure to herbicides used in Vietnam. Conversely, the three other physicians opined that it was as likely as not that the veteran's esophageal cancer was the result of exposure to herbicides used in Vietnam.

The Board finds that the three positive opinions outweigh the negative opinion. The three positive opinions are based on expert knowledge in oncology, personal knowledge of the veteran's history, examination and treatment of the veteran, and supporting medical literature as reviewed and explained in the medical reports. They discuss the unusual and rare nature of the veteran's cancer. They rule out the other possible risk factors for this cancer. They correctly note that the veteran had Agent Orange exposure. They conclude that Agent Orange exposure is an etiological factor. The negative opinion appears to rest entirely on the fact that esophageal cancer has not been determined to be a presumptive disorder by the IOM. None of the veteran's specific symptoms, unusual circumstances of his cancer, or accurate factors were discussed. Nothing specific to the veteran's case was referenced except for the fact that he served in Vietnam and that he had esophageal cancer. The only other specific reference was an analogy to Barrett's esophagus, which the veteran has not had. In light of the foregoing, the Board accords less probative weight to this opinion.

The evidence supports the claim of service connection for adenocarcinoma of the esophagus. Accordingly, service connection is warranted for adenocarcinoma of the esophagus.

ORDER

Service connection is granted for adenocarcinoma of the esophagus.

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

Department of Veterans Affairs

YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (BVA or Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order." If you are satisfied with the outcome of your appeal, you do not need to do anything. We will return your file to your local VA office to implement the BVA's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

? Appeal to the United States Court of Appeals for Veterans Claims (Court)
? File with the Board a motion for reconsideration of this decision
? File with the Board a motion to vacate this decision
? File with the Board a motion for revision of this decision based on clear and unmistakable error.
Although it would not affect this BVA decision, you may choose to also:
? Reopen your claim at the local VA office by submitting new and material evidence.

There is no time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. None of these things is mutually exclusive - you can do all five things at the same time if you wish. However, if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your case because of jurisdictional conflicts. If you file a Notice of Appeal with the Court before you file a motion with the BVA, the BVA will not be able to consider your motion without the Court's permission.

How long do I have to start my appeal to the Court? You have 120 days from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the United States Court of Appeals for Veterans Claims. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the Court. As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you, you will then have another 120 days from the date the BVA decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, it is your responsibility to make sure that your appeal to Court is filed on time.

How do I appeal to the United States Court of Appeals for Veterans Claims?
Send your Notice of Appeal to the Court at:

Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing

fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's web site on the Internet at www.vetapp.uscourts.gov, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal with the Court, not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the BVA to reconsider any part of this decision by writing a letter to the BVA stating why you believe that the BVA committed an obvious error of fact or law in this decision, or stating that new and material military service records have been discovered that apply to your appeal. If the BVA has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Send your letter to:
Director, Management and Administration (014)
Board of Veterans' Appeals
810 Vermont Avenue, NW
Washington, DC 20420

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Remember, the Board places no time limit on filing a motion for reconsideration, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to vacate? You can file a motion asking the BVA to vacate any part of this decision by writing a letter to the BVA stating why you believe you were denied due process of law during your appeal. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address above for the Director, Management and Administration, at the Board. Remember, the Board places no time limit on filing a motion to vacate, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to revise the Board's decision on the basis of clear and unmistakable error? You can file a motion asking that the Board revise this decision if you believe that the decision is based on "clear and unmistakable error" (CUE). Send this motion to the address above for the Director, Management and Administration, at the Board. You should be careful when preparing such a motion because it must meet specific requirements, and the Board will not review a final decision on this basis more than once. You should carefully review the Board's Rules of Practice on CUE, 38 C.F.R. 20.1400 -- 20.1411, and seek help from a qualified representative before filing such a motion. See discussion on representation below. Remember, the Board places no time limit on filing a CUE review motion, and you can do this at any time.

How do I reopen my claim? You can ask your local VA office to reopen your claim by simply sending them a statement indicating that you want to reopen your claim. However, to be successful in reopening your claim, you must submit new and material evidence to that office. See 38 C.F.R. 3.156(a).

Can someone represent me in my appeal? Yes. You can always represent yourself in any claim before VA, including the BVA, but you can also appoint someone to represent you. An accredited representative of a recognized service organization may represent you free of charge. VA approves these organizations to help veterans, service members, and dependents prepare their claims and present them to VA. An

accredited representative works for the service organization and knows how to prepare and present claims. You can find a listing of these organizations on the Internet at: www.va.gov/vso. You can also choose to be represented by a private attorney or by an "agent." (An agent is a person who is not a lawyer, but is specially accredited by VA.)

If you want someone to represent you before the Court, rather than before VA, then you can get information on how to do so by writing directly to the Court. Upon request, the Court will provide you with a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to represent appellants. This information is also provided on the Court's website at www.vetapp.uscourts.gov.

Do I have to pay an attorney or agent to represent me? Except for a claim involving a home or small business VA loan under Chapter 37 of title 38, United States Code, attorneys or agents cannot charge you a fee or accept payment for services they provide before the date BVA makes a final decision on your appeal. If you hire an attorney or accredited agent within 1 year of a final BVA decision, then the attorney or agent is allowed to charge you a fee for representing you before VA in most situations. An attorney can also charge you for representing you before the Court. VA cannot pay fees of attorneys or agents.

Fee for VA home and small business loan cases: An attorney or agent may charge you a reasonable fee for services involving a VA home loan or small business loan. For more information, read section 5904, title 38, United States Code.

In all cases, a copy of any fee agreement between you and an attorney or accredited agent must be sent to:

Office of the Senior Deputy Vice Chairman (012)
Board of Veterans' Appeals
810 Vermont Avenue, NW
Washington, DC 20420

The Board may decide, on its own, to review a fee agreement for reasonableness, or you or your attorney or agent can file a motion asking the Board to do so. Send such a motion to the address above for the Office of the Senior Deputy Vice Chairman at the Board.

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