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Tuesday, December 05, 2017, **Subject:** FYI 38th. ADA Approved.

Citation Nr: 1736420, Decision Date: 08/31/17, Archive Date: 09/06/17.

Docket # 14-41 192. On Appeal from the Department of Veterans Affairs Regional Office in Waco, TX.

THE ISSUE: Entitlement to service connection for ischemic heart disease.

REPRESENTATION: Appellant represented by: **Thomas K. Hagan**, Attorney.

WITNESS AT HEARING ON APPEAL: Appellant - ATTORNEY FOR THE BOARD, **Catherine Cykowski**, Counsel.

INTRODUCTION: The Veteran had active duty service from December 1966 to October 1968. This matter comes before the Board of Veterans' Appeals (Board) on appeal from a June 2013 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in Waco, TX.

In March 2017, the Veteran testified at a hearing before the undersigned Veterans Law Judge. A transcript of the hearing is of record. This appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c) (2016). 38 U.S.C.A. § 7107(a)(2) (West 2016).

FINDINGS OF FACT: #1. The evidence is at least in equipoise with respect to whether the Veteran served near the demilitarized zone (DMZ) and was exposed to herbicides.

#2. The Veteran has been diagnosed with ischemic heart disease, which is a disability presumed to be related to herbicide exposure.

CONCLUSION OF LAW: The criteria for entitlement to service connection for ischemic heart disease are met. 38 U.S.C.A. §§ 1110, 1116 (West 2016); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2016).

REASONS AND BASES FOR FINDINGS AND CONCLUSION: A veteran who, during active military, naval, or air service, served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. 38 C.F.R. § 3.307(a)(6)(iv) (in effect since February 14, 2011).

VA regulations provide that the following diseases shall be service connected if the Veteran was exposed to an herbicide agent during active service, even though there is no record of such disease during service, and provided further that the requirements of 38 C.F.R. § 3.307(d) are satisfied: AL amyloidosis, chloracne or other acneform disease consistent with chloracne, type II diabetes mellitus, Hodgkin's disease, ischemic heart disease (to include coronary artery disease), all chronic B-cell leukemia, multiple myeloma, non-Hodgkin's lymphoma, Parkinson's disease, early-onset peripheral neuropathy, porphyria cutanea tarda, prostate cancer, certain respiratory cancers, and soft tissue sarcoma. 38 C.F.R. § 3.309(e) (2016).

The Veteran seeks service connection for ischemic heart disease on a presumptive basis secondary to Agent Orange exposure. He maintains that his unit was located near the DMZ in the area in which herbicides were applied.

VA treatment records reflect a current diagnosis of coronary artery disease. The Veteran underwent coronary angioplasty in January 2000.

A May 2013 formal finding indicates that the RO found that there was insufficient evidence to verify service in or near the DMZ. The RO determined that the Veteran's unit, Battery C, 7th Battalion, 5th Artillery, did not operate in or near the DMZ during his assignment with that unit from June 1967 to October 1968. The formal finding was based on a review of service treatment records, separation documents, and information from the Department of Defense.

At the Board hearing, the Veteran testified that his unit was sent from Camp Page to Charlie Battery in Yu-Chon-ni. The Veteran testified that he was a dog handler and patrolled perimeter areas that were treated with Agent Orange. The Veteran's representative stated that Yu-Chon-ni is approximately 11 miles from the DMZ.

The evidence submitted by the Veteran includes a battalion history, a map prepared by a geospatial analyst, and lay statements. A battalion history for the 7th Battalion, 5th Artillery moved into the DMZ in 1962 and joined other units of the 38th Artillery Brigade in order to maintain air defense readiness. In November 2014, the Veteran submitted a map prepared by a geospatial analyst, reflecting that Yu-Chon-ni is approximately 15 miles from the DMZ.

A lay statement from a fellow service member, K.S., indicated that he also served with the 7th Battalion, 5th Artillery. K.S. stated that their compound was located near the DMZ.

Based upon a careful review of all of the evidence, including the Veteran's battalion history, his testimony, and the evidence from the geospatial analyst, the Board finds that the evidence is at least in equipoise that the Veteran served near the DMZ during the applicable time period and was exposed to herbicides. Thus, service connection is warranted for ischemic heart disease on a presumptive basis. 38 U.S.C.A. §§ 1110, 1116, 5107(b) (West 2016); 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309(e) (2016).

ORDER: Service connection for ischemic heart disease is granted.

BRADLEY W. HENNINGS, Veterans Law Judge, Board of Veterans' Appeals, Department of Veterans Affairs.