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Citation NR: 9610170
Decision Date: 04/03/96
Archive Date: 04/25/96
DOCKET NO. 94-02 354) DATE
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On appeal from the Department of Veterans Affairs Regional Office in Boston, Massachusetts

THE ISSUE

Entitlement to service connection for amyotrophic lateral sclerosis (ALS).

REPRESENTATION

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

WITNESSES AT HEARINGS ON APPEAL

The veteran and his wife

ATTORNEY FOR THE BOARD

Richard V. Chamberlain, Counsel

INTRODUCTION

The veteran served on active duty from October 1970 to February 1972.

In August 1980, the Board of Veterans' Appeals (Board) denied service connection for ALS. In 1992, the veteran requested reopening of the claim for service connection for ALS.

This appeal arises from a July 1992 rating decision by the Department of Veterans Affairs (VA) Regional Office (RO) in Boston, Massachusetts, that determined there was no new and material evidence to reopen a claim for service connection for ALS. The veteran has appealed to the Board for favorable resolution of this matter.

With the 1992 application to reopen the claim for service connection for ALS, various evidence has been received, including a report from Lawrence N. Metz, M.D., dated in February 1996, that links the veteran's ALS to his service in Guam. This report constitutes new and material evidence, and the Board will consider entitlement to service connection for ALS on a de novo basis. 38 U.S.C.A. § 5108 (West 1991 & Supp. 1995); 38 C.F.R. § 3.156(a) (1995); Manio v. Derwinski, 1 Vet.App. 140 (1991); Colvin v. Derwinski, 1 Vet.App. 171 (1991).

Although the RO considered the issue from the perspective of whether there was new and material evidence to reopen the claim for service connection for ALS, the Board finds that there is no prejudice to the veteran in appellate review on a de novo basis. The statement of the case provided the veteran

with the regulatory criteria for establishing service connection for ALS, and a review of the file shows that he and his representative are aware of all the pertinent evidence and controlling legal authority on the issue of service connection for ALS. *Bernard v. Brown*, 4 Vet.App. 384 (1993); *Curry v. Brown*, 7 Vet.App. 59 (1994).

CONTENTIONS OF APPELLANT ON APPEAL

The veteran contends that he served in Guam while in service, that ALS or some type of motor neuron disease is present in epidemic proportions in Guam, that his Guam-type ALS is a slowly progressing disease, and that his Guam-type ALS disease which was first diagnosed a few years after service is related to his service in Guam. He requests service connection for ALS.

DECISION OF THE BOARD

The Board, in accordance with the provisions of 38 U.S.C.A. § 7104 (West 1991 & Supp. 1995), 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, and for the following reasons and bases, it is the decision of the Board that the evidence is in equipoise and thus supports granting service connection for ALS.

FINDING OF FACT

ALS had its onset in service.

CONCLUSION OF LAW

ALS was incurred in active service. 38 U.S.C.A. § 1110, 5107 (West 1991 & Supp. 1995); 38 C.F.R. § 3.303 (1995).

REASONS AND BASES FOR FINDING AND CONCLUSION

A. Factual Background

A service document, DD Form 214-N, shows that the veteran had active service from October 1970 to February 1972, including over nine months of foreign service, and that his last duty assignment was in Guam. This document shows that the veteran was born in January 1950.

The service medical records are negative for ALS.

A report of David C. Haas, M.D., of the State University of New York, dated in March 1976, shows that the veteran was admitted at the University Hospital in March 1976 for neurological evaluation. It was noted that he was seen in February 1976 with a history of progressive weakness of the left hand and entire left upper limb beginning about one year ago. It was noted that he had undergone various studies in Springfield, Massachusetts, and that the studies were essentially unremarkable. Studies during his hospitalization at the University Hospital revealed that he had widespread upper and lower motor neuron disease in all four limbs. The diagnosis was ALS.

A report of Joseph Hahn, M.D., dated in January 1979, notes that the veteran had been under the care of this physician since 1975. It was noted that he had ALS and was totally disabled.

A report of Barry G. W. Arnason, M.D., Professor and Chairman of the Division of the Biological Sciences and the Pritzker School of Medicine at the University of Chicago, dated in July 1979, reveals that the veteran was seen in July 1978 and admitted to Billings Hospital at the University of Chicago, for neurologic evaluation. A diagnosis of ALS was established. It was noted that the veteran had a history of military service in Guam and that this was the site of a remarkable focus of ALS. The physician reported that he had been to Guam as a U. S. representative at a U.S.A.-Japan conference on ALS and was quite familiar with the ALS situation in that country. It was noted that ALS on Guam was slowly progressive as in the veteran's case, that only 10 to 15 percent of ALS cases in Americans were slowly progressive as in the veteran's case, that ALS in a third decade is rare in the U.S.A. and slowing progressing disease in this age group was very rare, that the veteran's ALS began within a relatively short interval of his leaving Guam, and that the course of ALS on Guam is unknown. It was reported that the environmental factors present on the island of Guam were thought to possibly be the cause of ALS and persons residing on Guam were thought to be particularly at risk, and that the physician had encountered two other Guam-type ALS cases and that the disease had developed after the persons returned to the mainland. The examiner opined that the veteran's Guam- type ALS was related to service.

In a report, dated in September 1979, Dr. Arnason clearly opined that the veteran's Guam-type ALS occurred before the veteran was aware of it, and that it was distinctly possible and even more probable than not that his illness had begun within one year of his separation from service.

VA medical records show that the veteran was seen for ALS in 1979. A summary of hospitalization in October 1979 shows a diagnosis of ALS.

A report of Robert H. Brown, Jr., M.D., of the Massachusetts General Hospital-Harvard Medical School, dated in August 1990, notes that the veteran had a long-standing-type motor neuron disease. The physician reported that the veteran had suffered from this slowly progressive disease since his mid- twenties. It was noted that the veteran's condition was a form of motor neuron disease, but should not be classified as ALS because the onset of the veteran's illness was far earlier than expected in ALS and that the duration of the veteran's illness greatly exceeded the expected lifespan for ALS. The doctor said that it could not be specifically said that the veteran's motor neuron disease started within one year prior to clinical diagnosis, but that the slow time course of the illness suggested it might have been present for considerably longer in a subclinical state.

A letter from a VA medical official, received in June 1993, notes that Guam-type ALS appeared to be associated with an exogenous toxic agent, cycad, and that the seeds of this plant grew only on Guam and neighboring islands. It was noted that the seeds of this plant were used to make pancakes and eaten as a traditional delicacy in that country. It was noted that, despite extensive epidemiologic research conducted since the early 1950's, the causes of the high incidence of Guam-type ALS had not yet been identified.

Medical literature, received in September 1993, notes the history of a patient who had Guam-type ALS. It was noted that the patient had resided in Guam for one year some seven years before the onset of the symptoms.

The veteran and his wife testified at a hearing at the RO in September 1993. The veteran's wife essentially spoke for the veteran and reported that his first symptoms of ALS were around 1974 and that he had been told he had ALS around 1977. The testimony was to the effect that the veteran had Guam-type ALS, that there was no history in his family of ALS, and that he did not have a gene identified in persons with ALS occurring elsewhere in the world.

Another report from Dr. Brown, dated in September 1995, notes that he was following the veteran in the Neuromuscular Clinic at the Massachusetts General Hospital. It was noted that the veteran had a highly atypical, slowly progressive form of motor neuron disease which began in his early twenties, perhaps as early as 22. It was noted that the veteran was losing less than 5 percent of function per year which was particularly important to document because a motor neuron disease of such slow progression would be very difficult to perceive, and that it was hard to be certain exactly when the disorder began.

A videotape was received in 1995. This tape shows that the veteran's claim for service connection for ALS for VA benefits, and his difficulties in obtaining the requested benefit, were highlighted in a news story of a television station.

Medical literature concerning ALS was received in January 1996. It was noted that epidemiologic studies suggested the existence of a long latent period between Guam-type ALS and diagnosis. It was also related that the studies suggested that Guam-type ALS appeared in younger subjects and could be associated with heavy exposure to cycad chemicals. Another article noted the prevalence of ALS in Guam was at one time 50 to 100 times the estimates for the continental United States and other developed countries.

The veteran and his wife testified before the Board in January 1996. The veteran's wife spoke for him because his ALS had caused severe speech impediment. A statement was submitted in which the veteran reported that medical literature revealed that ALS was present in epidemic proportions in Guam and was probably due to environmental toxins. It was also noted that the veteran had served in Guam and that he did not have the ALS gene found in patients who had ALS occurring in other parts of the world. It was noted that the veteran had been diagnosed with ALS at an early age and that medical literature indicated that ALS occurring in other parts of the world is usually not diagnosed until later in life. It was reported that Guam-type ALS was slowly progressive and that patients with this disease had a longer life expectancy than patients with ALS occurring in other parts of the world who had a life expectancy of 3 to 5 years.

The report of Dr. Metz, dated in February 1996, notes that the veteran had been initially seen in 1976. Dr. Metz noted the veteran's history of ALS from 1975, the observations by Dr. Arnason, a neuro-immunologist in Chicago, and the observations of Dr. Brown at the Massachusetts General Hospital. Dr. Metz found the veteran's ALS was radically different from the majority of people with ALS that he had ever seen. Prior to the veteran's case, Dr. Metz reported that the longest survival that he had seen in an ALS patient was 12 years. It was noted that, in the United States and World Literature, less than 10 percent of cases of ALS were slowly progressive and that the medium life expectancy from the time of diagnosis was three years. It was noted that the peak incidence of ALS was in the sixth decade of life, and incidence under the age of 30 was quite rare. It was noted that the veteran had served in Guam and that this country had a high incidence of ALS and, at its peak, the incidence of ALS in

Guam was 100 times that of the rest of the world. It was noted that the veteran's symptoms began at an early age about three years after his leaving the Island of Guam and that he was still alive, indicating a slowly progressive type of ALS which was not typical of cases seen in the United States. The physician opined that the relationship between the veteran's sojourn on the Island of Guam and the onset of his ALS was inescapable, and felt that the veteran's Guam-type ALS was related to service in Guam.

In a report, dated in February 1996, Dr. Arnason opines that it is more probable than not that the veteran contracted ALS while in service in Guam.

B. Legal Analysis

The veteran's claim for service connection for ALS is well grounded, meaning it is plausible. The Board finds that all relevant evidence has been obtained with regard to the claim and that no further assistance to the veteran is required to comply with VA's duty to assist him. 38 U.S.C.A. § 5107(a) (West 1991 & Supp 1995.)

In order to establish service connection for a disease, the evidence must show the presence of it and that it resulted from disease or injury incurred in or aggravated by service. 38 U.S.C.A. § 1110; 38 C.F.R. § 3.303.

The service medical records do not show the presence of ALS. The post-service medical records do not show symptoms of ALS until around 1975 and do not demonstrate ALS until 1976. A report from Dr. Arnason in 1979 indicates that the veteran has Guam-type ALS which is a slowly progressive type of disease which is atypical of ALS cases in Americans, that the veteran's ALS had its onset in the third decade which is also atypical for ALS cases in Americans, and that the veteran's ALS began within a relatively short interval of his leaving Guam, a country that had a high incidence of ALS. Dr. Arnason opined that the veteran's ALS was more probable than not related to service and may have begun within one year of his separation from service.

Some of the evidence suggests that the veteran's ALS may have been present within the first post service years and VA laws and regulations provide for the presumption of service connection for progressive muscular atrophy-type diseases, such as ALS, if they become manifest to a degree of 10 percent within one year from date of termination of service. 38 U.S.C.A. §§ 1101, 1112, 1113 (West 1991 & Supp. 1995); 38 C.F.R. §§ 3.307, 3.309 (1995). The evidence does not convincingly show that the veteran's ALS became manifest to a degree of 10 percent within the first post service year, however several opinions have placed the probable onset within that time frame. Service connection may 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); *Nash v. Brown*, 6 Vet.App. 1 (1993).

The reports of Dr. Arnason indicate that the veteran's ALS is related to service. Also, reports from Dr. Brown show that the veteran has a motor neuron disease, but not typical ALS. Dr. Brown studied the veteran's case and opined that the veteran has a slowly progressive type of motor neuron disease which had its onset when the veteran was in his early twenties. Another physician, Dr. Metz, also studied the

veteran's case and found that the veteran had a Guam-type ALS which was atypical of the ALS found in American cases. Dr. Metz said that the veteran's ALS was slowly progressive, began at an early age, and that the veteran served on Guam which at one time had an incidence of ALS that was 100 times that of the rest of the world. The facts in the veteran's case and a review of medical literature led Dr. Metz to conclude that the veteran's ALS was directly related to his service in Guam.

After consideration of all the evidence, including testimony presented in this case and various medical opinions **linking the veteran's ALS to service in Guam**, or in the alternative to having its onset within the presumptive period or in fact to service, the Board finds that the evidence of record is essentially in equipoise on the question of whether the veteran's ALS had its onset in service. Hence, the veteran prevails as to his claim for service connection for ALS with application of the doctrine of reasonable doubt. 38 U.S.C.A. § 5107(b); Gilbert v. Derwinski, 1 Vet.App. 49 (1990).

ORDER

Service connection for ALS is granted.

EUGENE A. O'NEILL Member, Board of Veterans' Appeals

The Board of Veterans' Appeals Administrative Procedures Improvement Act, Pub. L. No. 103-271, § 6, 108 Stat. 740, 741

(1994), permits a proceeding instituted before the Board to be assigned to an individual member of the Board for a determination. This proceeding has been assigned to an individual member of the Board.

NOTICE OF APPELLATE RIGHTS: Under 38 U.S.C.A. § 7266 (West 1991 & Supp. 1995), a decision of the Board of Veterans' Appeals granting less than the complete benefit, or benefits, sought on appeal is appealable to the United States Court of Veterans Appeals within 120 days from the date of mailing of notice of the decision, provided that a Notice of Disagreement concerning an issue which was before the Board was filed with the agency of original jurisdiction on or after November 18, 1988. Veterans' Judicial Review Act, Pub. L. No. 100-687, § 402, 102 Stat. 4105, 4122 (1988). The date which appears on the face of this decision constitutes the date of mailing and the copy of this decision which you have received is your notice of the action taken on your appeal by the Board of Veterans' Appeals.