

IN THE APPEAL OF

This matter comes on appeal before the Board of Veterans' Appeals (Board) from an August 2010 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in Atlanta, Georgia.

Preliminarily, the Board notes that this matter has been adjudicated and denied in an August 2010 rating decision as a claim to reopen based on new and material evidence. However, since the prior June 2007 denial, additional relevant service personnel records, received in December 2010, were associated with the file. Under the provisions of 38 C.F.R. § 3.156 (c) (2016), at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding the requirement under subpart (a) that there first be new and material evidence to reopen the claim. *See also Vigil v. Peake*, 22 Vet. App. 63 (2008) (official service department records are new and material evidence, thus requiring de novo review or reconsideration, rather than as a claim to reopen). Accordingly, the Board will consider the service connection claim for a cardiac condition on the merits, without addressing any threshold issue of whether new and material evidence has been received to reopen the claim. *See* 38 C.F.R. § 3.156 (c). The Board has recharacterized the title page accordingly.

This appeal was remanded in April 2017 for a Travel Board hearing. The Veteran withdrew his request for a Travel Board hearing in August 2017 correspondence. As such, the appeal has returned to the Board for review.

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 2014).

FINDING OF FACT

The Veteran has a current disability of a cardiovascular disorder that had its onset during active service.

CONCLUSION OF LAW

Resolving reasonable doubt in the Veteran's favor, the criteria for service connection for a cardiovascular disorder are met. 38 U.S.C.A. §§ 1110, 1131, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.303 (2016).

REASONS AND BASES FOR FINDING AND CONCLUSION

Service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by active military, naval, or air service. 38 U.S.C.A. §§ 1110, 1131; 38 C.F.R. § 3.303 (a). 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).

Lay assertions may serve to support a claim for service connection by establishing the occurrence of observable events or the presence of disability or symptoms of disability subject to lay observation. *See Jandreau v. Nicholson*, 492 F.3d 1372 (Fed. Cir. 2007); *see also Buchanan v. Nicholson*, 451 F.3d 1331, 1336 (Fed. Cir. 2006) (addressing lay evidence as potentially competent to support presence of disability even where not corroborated by contemporaneous medical evidence). The Federal Circuit has clarified that lay evidence can be competent and sufficient to establish a diagnosis or etiology when (1) a lay person is competent to identify a medical condition; (2) the lay person is reporting a contemporaneous medical diagnosis, or (3) lay testimony describing symptoms at the time supports a later diagnosis by a medical professional. *Davidson v. Shinseki*, 581 F.3d 1313, 1316 (Fed. Cir. 2009); *Jandreau*, 492 F.3d 1372.

In rendering a decision on appeal, the Board must also analyze the credibility and probative value of the evidence, account for the evidence which it finds to be persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant. *Gabrielson v. Brown*, 7 Vet. App. 36, 39-40 (1994); *Gilbert v. Derwinski*, 1 Vet. App. 49, 57 (1990). Competency of evidence

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differs from weight and credibility. Competency is a legal concept determining whether testimony may be heard and considered by the trier of fact, while credibility is a factual determination going to the probative value of the evidence to be made after the evidence has been admitted. *Rucker v. Brown*, 10 Vet. App. 67, 74 (1997); *Layno v. Brown*, 6 Vet. App. 465, 469 (1994).

The Veteran asserts that service connection is warranted because his heart condition started in service. Specifically, he asserts that he was treated for cardiovascular problems in service and that he experienced cardiac issues during active service. *See, e.g.*, March 2010 Statement from the Veteran. *See also* July 2012 Hearing Testimony.

In this case, the Veteran's STRs are incomplete, apparently having been destroyed in a fire. *See* April 2010 National Personnel Records Center Letter, received December 15, 2010, at 1. Where the STRs are absent or incomplete, the obligation to explain findings and conclusions and to consider carefully the benefit-of-the-doubt rule is heightened. *O'Hare v. Derwinski*, 1 Vet. App. 365, 367 (1991). But, this does not lower the threshold for an allowance of a claim, for example where the evidence almost but not quite reaches the positive-negative balance. In other words, the legal standard for proving a claim is not lowered; rather, the obligation to discuss and evaluate evidence is heightened. *Russo v. Brown*, 9 Vet. App. 46 (1996). Moreover, the absence of some of the service medical records in a fire does not create an adverse-presumption rule. *Cromer v. Nicholson*, 19 Vet. App. 215 (2005).

The Board finds that the Veteran has a current disability of angina and is being treated for chest pain. *See* April 2007 Cardiology Consult, received February 14, 2012, at 18-19, 37-41. His medical records also show other cardiac issues such as atherosclerotic cardiovascular disease and coronary artery disease. *See* Heart Conditions DBQ, received December 5, 2012, at 1.

STRs dated in June 1958 show that the Veteran received an electro-cardiogram, and "suspected pericarditis" was noted as occurring in the line of duty. He was examined for "passing out" in May 1955. *See* STRs, received July 7, 1977 at 2, 6.

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His STRs also show he reported tightness in his chest in April 1956, and the Veteran complained of sharp chest pain in June 1956. *See* STRs, received December 15, 2010 at 1.

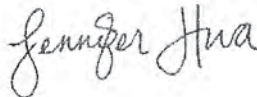
A VA examiner in May 1977 reported that the Veteran experienced blackout episodes due to chest pains. The Veteran also reported monthly episodes of chest pain with severe episodes of chest pains as occurring every two months. That examiner diagnosed him with chest pain. *See* May 1977 Special Cardiac Examination, received June 6, 1977, at 2. Furthermore, in July 1977, a medical record from Cardiology Associates noted that the Veteran's complaints of chest pain go far back as 1962. *See* July 1977 Discharge Summary, received August 10, 1977, at 3.

Given the evidence of record, the Board finds that the evidence is in relative equipoise on the question of whether the current heart condition began in service, that is, whether his heart condition was directly "incurred in" service. The Veteran states he has experienced symptoms of chest pains in service and was seen by doctors multiple times during service for cardiac problems.

Resolving reasonable doubt in the Veteran's favor on this question, the Board finds that symptoms of the Veteran's current heart condition began during service, that is, his heart condition was directly incurred in service. *See* 38 U.S.C.A. § 5107; 38 C.F.R. §§ 3.102, 3.303(a), (d). Thus, service connection is granted.

ORDER

Entitlement to service connection for a cardiovascular disorder is granted.



JENNIFER HWA

Veterans Law Judge, Board of Veterans' Appeals