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On appeal from the
Department of Veterans Affairs Regional Office in Atlanta, Georgia

THE ISSUE

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

REPRESENTATION

Appellant represented by: Chuck A. Pardue, Attorney at Law

WITNESS AT HEARING ON APPEAL

Appellant

ATTORNEY FOR THE BOARD

J. Juliano, Counsel

INTRODUCTION

The Veteran served on active duty from August 1968 to September 1970. The Veteran died in January 2002. The appellant claims to be the Veteran's surviving spouse.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a May 2011 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in Philadelphia, Pennsylvania. Jurisdiction is currently with the RO in Atlanta, Georgia.

In January 2013, the appellant testified before the undersigned Veterans Law Judge at a videoconference Board hearing at the RO in Atlanta, Georgia. A transcript of the proceeding has been associated with the claims file.

In March 2016, the Board remanded the appellant's claim for further development. A more detailed procedural posture is set forth in the March 2016 Board remand. Such development has been completed and associated with the claims file, and this matter is now returned to the Board for decision.

In May 2015, the Veteran's daughter, D.H., filed a Form 21-601, Application for Accrued Amounts Due to a Deceased Beneficiary, which claim has not been adjudicated by the agency of original jurisdiction (AOJ). See also Birth Certificate, Received August 1985. Therefore, the matter is referred to the AOJ for adjudication.

This appeal was processed using the VBMS paperless claims processing system. Accordingly, any future consideration of this appellant's case should take into consideration the existence of this electronic record.

The appeal is REMANDED to the Agency of Original Jurisdiction (AOJ). VA will notify the appellant if further action is required.

REMAND

The Veteran served on active duty from August 1968 to September 1970, including service in the Republic of Vietnam from October 1969 to July 1970. He died in January 2002. The death certificate shows that the sole

cause of death was metastatic rectal cancer. The appellant claims to be his surviving spouse. The Board makes no determination herein as to whether the appellant constitutes a "surviving spouse" for VA purposes.

At the time of the Veteran's death, he was service connected for PTSD. He had no other service-connected disability. See Rating codesheet, June 2001.

The appellant essentially asserts that the Veteran's service-connected PTSD substantially or materially contributed to the cause of his death because it caused him to be noncompliant with his rectal cancer treatment. See, e.g., Form 9, November 2011; see also 38 C.F.R. § 3.312 (2016). In the alternative, she alleges that metastatic rectal cancer is a soft tissue sarcoma type entitled to presumptive service connection under 38 C.F.R. § 3.309(e) based on the Veteran's service in Vietnam. See Form 21-534, April 2010.

By way of background, June 2000, July 2000, and August 2000 VA hospital discharge summaries shows the Veteran had three hospitalizations involving psychiatric complaints. See Discharge Summaries, received August 2002. The June 2000 discharge summary shows he reported that his wife had died in January 2000, he lost custody of his three stepchildren, and he was having difficulty caring for himself and he had lost 30 pounds (he married the appellant in October 2000 and February 2001). He also complained of hemorrhoid pain. It was noted that "the patient has missed numerous appointments in the Primary Care Team and Mental Health Clinics," and that he left the hospital for four days without being discharged. The summary shows he was given a steroid cream for his hemorrhoid complaints and he was scheduled for a barium enema.

An August 2000 VA biopsy report shows rectal adenocarcinoma was found (not sarcoma). See p.4 of 175. A September 2000 VA hospital discharge summary shows the Veteran presented complaining of rectal pain after a colonoscopy and biopsy one week prior. It also shows he left the hospital without being discharged. A subsequent September 2000 VA hospital discharge summary and operative report show he returned the next day and underwent a colostomy. See VA treatment records, received August 2002 at p.19, and 60-61 of 175. An October 2000 VA hospital discharge summary shows he was admitted for pneumonia, and notes that he was receiving radiation treatment daily at the Medical College of Georgia (MCG), and that he had been receiving chemotherapy. See Discharge Summaries, received August 2002. As noted above, he died in January 2002.

The Board notes, however, that none of the Veteran's underlying VA treatment records (CAPRI) dated prior to November 2000 have been associated with the claims file. Prior to November 2000, the records only include some hospital discharge summaries, and a few diagnostic testing reports and operative reports, including the August 2000 biopsy report and September 2000 colostomy procedure report, but none of the underlying VA treatment records. While treatment clearly began in at least August 2000 based on the biopsy report, it appears possible that there may be outstanding relevant VA treatment records dating back as early as February 1999, because the diagnostic testing reports and operative reports already associated with the claims file include a February 1999 barium enema study report. See p.19 of 175. Then, a VA medical center appointment listing shows that the Veteran no-showed for GI medicine appointments in May 1999 and January 2000, barium enemas were performed in February 2000 and March 2000, he no-showed for an April 2000 GI medicine appointment, barium enemas were performed in July 2000 and August 2000, and then he was seen again by GI medicine in August 2000. See p.81 of 175. The appellant testified at the Board hearing that the Veteran had sought treatment for rectal bleeding for a long time prior to his diagnosis in August 2000. Therefore, it appears that several relevant VA treatment records dating from February 1999 to November 2000 may be missing from the file. The Board is also cognizant that the crux of the appellant's claim is that the Veteran's PTSD interfered with his ability to seek or be compliant with his treatment.

Also, none of the Veteran's private treatment records from the Medical College of Georgia have been associated with the claims file, where he was apparently receiving radiation treatment in October 2000 as per the October 2000 VA hospital discharge summary report.

A July 2016 VA medical opinion shows the examiner opined that it is less likely than not that the Veteran's service-connected PTSD caused or materially or substantially contributed to his death, reasoning in part that the Veteran was noted as terminal around the time of diagnosis, his initial surgery involving a colostomy was palliative and noncurative, the cancer was not resected or removed, only 45 percent of patients with metastatic rectal cancer survive for 18 months (citing statistical data), and that the Veteran survived for 16 months. The Board notes that the request for the VA medical opinion includes a notation by the RO that the Veteran was told by a VA social worker in October 2000 that his cancer was terminal, which record is not in the file.

In light of all of the above, the Board finds that this matter should be remanded so that all of the Veteran's VA treatment records dated from February 1999 to November 2000, and all of his private treatment records from the

Medical College of Georgia dated from August 2000 to January 2002, may be associated with the claims file.

In addition, the Board notes that none of the Veteran's treatment records from his final hospitalization are in the claims file. His January 2002 death certificate shows he died at St. Joseph's Hospital. Likewise, his daughter S.H.W. submitted a March 2004 Form 21-4142 in which she identified these records to be obtained. Therefore, on remand, all of the Veteran's treatment records from St. Joseph Hospital dated in January 2002 should be obtained.

After all of the above outstanding treatment records have been obtained, the file should be returned to the VA examiner who provided the July 2016 VA medical opinion for clarification as to whether there is any change in the opinion.

Accordingly, the case is REMANDED for the following action:

1. Obtain all of the Veteran's VA treatment records (CAPRI) dated from February 1999 to November 2000.

Please ensure that these records include his underlying treatment records leading up to his August 30, 2000 biopsy, any September 2000 colonoscopy report, and any chemotherapy and radiation treatment.

2. Obtain all of the Veteran's private treatment records from the Medical College of Georgia dated from September 2000 to January 2002, where the Veteran was apparently receiving radiation treatment.

3. Obtain all of the Veteran's records of his final hospitalization at St. Joseph's Hospital in January 2002.

4. After all of the above development has been completed, ask the VA examiner who prepared the July 2016 VA medical opinion to review the claims file, including a copy of this remand and all the newly associated VA treatment records, Medical College of Georgia records, and final hospitalization records from St. Joseph's Hospital, and to please clarify whether there is any change in the prior opinion as to whether it is "at least as likely as not" that the Veteran's service-connected PTSD caused, or materially or substantially contributed to, the cause of the Veteran's death.

5. Then, readjudicate the appellant's claim. If the claim remains denied, the appellant should be provided a Supplemental Statement of the Case (SSOC), and then the claim should be returned to the Board for further review.

The Board intimates no opinion as to the ultimate outcome of the matter that the Board has remanded. The Veteran has the right to submit additional evidence and argument on that matter. *Kutscherousky v. West*, 12 Vet. App. 369 (1999).

This claim must be afforded expeditious treatment. The law requires that all claims that are remanded by the Board of Veterans' Appeals or by the United States Court of Appeals for Veterans Claims for additional development or other appropriate action must be handled in an expeditious manner. See 38 U.S.C.A. §§ 5109B, 7112 (West 2014).

H. N. SCHWARTZ

Veterans Law Judge, Board of Veterans' Appeals

Under 38 U.S.C.A. § 7252 (West 2014), only a decision of the Board of Veterans' Appeals is appealable to the United States Court of Appeals for Veterans Claims. This remand is in the nature of a preliminary order and does not constitute a decision of the Board on the merits of your appeal. 38 C.F.R. § 20.1100(b) (2016).