

Citation Nr: 1609961

Decision Date: 03/11/16 Archive Date: 03/22/16

DOCKET NO. 11-31 143) DATE
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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

T. Minot, Associate Counsel

INTRODUCTION

The Veteran served on active duty from August 1968 to September 1970. He died in January 2002. The appellant is claiming as 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 over the claims file currently resides with the Atlanta, Georgia RO.

In January 2013, the appellant testified at a Board videoconference hearing before the undersigned Veterans Law Judge (VLJ). A transcript of the hearing is of record.

In May 2014, the Board reopened the issue on appeal and remanded it for evidentiary development.

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

REMAND

The appellant seeks an award of service connection for the cause of the Veteran's death. The Veteran died in January 2002; the death certificate reflects the cause of death as metastatic rectal cancer. At the time of his death, the Veteran was service-connected for posttraumatic stress disorder (PTSD), rated as 100 percent disabling. The appellant asserts that the Veteran's PTSD caused him to be noncompliant with medical treatment for his cancer, and thus contributed to his death. VA treatment records prior to the Veteran's death document that he failed to report for treatment, was not taking his medication correctly, and was discharged based on his unauthorized absence. In addition, the record contains multiple lay statements from the Veteran's friends and family contending that his mental health problems resulted in noncompliance with treatment and hastened his death.

In May 2014, the Board directed the AOJ to obtain a VA medical opinion as to whether it is as likely as not that the Veteran's PTSD caused, materially contributed to, or hastened his death. Such an opinion was provided in June 2014. After reviewing the records, the examiner noted that the Veteran carried diagnoses of schizophrenia and PTSD and had not shown up for mental health follow-up appointments since 2000. The examiner then concluded: "It is clear from the records that Veteran's death was medically related, and so, it is less likely than not that PTSD caused or contributed to [his] death." No additional rationale was provided.

The Board finds that the June 2014 VA medical opinion is inadequate because it lacks a rationale. See *Nieves-Rodriguez v. Peake*, 22 Vet. App. 295 (2008) (most of the probative value of a medical opinion is derived from its reasons and bases). In short, the opinion simply reiterates the known fact that the Veteran's cancer was the "medical" cause of death, without addressing the appellant's claim that his PTSD interfered with his treatment and therefore sped the progress of the disease. The law is clear that once VA undertakes to provide an examination or obtain an opinion, it must ensure that the examination or opinion is adequate. *Barr v. Nicholson*, 21 Vet. App. 303, 312 (2007). Moreover, this case presents complex medical issues which cannot be answered by the Board. See *Colvin v. Derwinski*, 1 Vet. App. 171, 175 (1991) (the Board is prohibited from exercising its own independent judgment to resolve medical questions). Therefore, a remand is required in order to obtain another medical opinion evaluating the appellant's claim.

Accordingly, the case is **REMANDED** for the following action:

1. Send the claims file to a different VA examiner for another addendum regarding the appellant's claim. The examiner should offer an opinion as to whether it is as likely as not (50 percent probability or more) that the Veteran's PTSD symptoms-to include his failure to report for treatment; his failure to take his medication correctly; and his history of discharge based on unauthorized absence-caused, materially contributed to, or hastened his death from metastatic rectal cancer.

A complete rationale should accompany each opinion provided and should be based on examination findings, historical records, and medical principles.

2. After the development requested above has been completed to the extent possible, the AOJ should readjudicate the claim on appeal. If any benefit sought remains denied, the appellant and her representative should be furnished a Supplemental Statement of the Case.

Thereafter, if indicated, the case should be returned to the Board for the purpose of appellate disposition.

The appellant has the right to submit additional evidence and argument on the matter or matters the Board has remanded. *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) (2015).