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DEPARTMENT OF VETERANS AFFAIRS
Hartford Regional Office
PO Box 310909
Newington, CT 06131

JOSIAH B. VENTER

VA File Number



Represented By:
AGENT OR PVT ATTY-EXCLUSIVE CONTACT NOT REQUESTED

Decision Review Officer Decision
November 26, 2012

INTRODUCTION

The records reflect that JOSIAH B. VENTER was a veteran of the Vietnam Era. The veteran served in the Navy from December 15, 1967 to December 14, 1970. You presented evidence and testimony at your personal hearing held July 10, 2012 at VARO Hartford. Based upon the evidence of record, we have made the following decision on your claim.

DECISION

1. Service connection for the purposes of accrued benefits for MDSI/ Acute Myeloid Leukemia is granted with an evaluation of 100 percent effective September 30, 2011. This is considered to be a full grant of all benefits sought on appeal with regard to this issue, and the appeal as to this issue is therefore considered to be resolved.
2. Service connection for the cause of death is granted. This is considered to be a full grant of all benefits sought on appeal with regard to this issue, and the appeal as to this issue is therefore considered to be resolved.
3. Basic eligibility to Dependents' Educational Assistance is established from October 2, 2011.

EVIDENCE

REASONS FOR DECISION

1. Service connection for MDSI/ Acute Myeloid Leukemia.

An accrued rating decision may be made after a Veteran's death on a disability claim pending at death, if a claim for accrued benefits is received within one year. A pending claim is any claim which has not been completely adjudicated at the time of death. A claim for service-connected disability compensation benefits was filed by Mr. Venter on September 30, 2011 and was pending at the time of his death on October 2, 2011.

Your claim for accrued benefits via VA Form 21-534 was received on November 15, 2011. Receipt of a VA Form 21-534 will be accepted as both a claim for accrued benefits and a substitution request. Therefore, your claim for accrued benefits is viewed as a continuation of the claim pending at the time of Mr. Venter's death, and you have submitted additional evidence in support of the claim.

At your personal hearing, your attorney submitted a number of additional documents, including copies of service personnel records, a letter from Mr. Venter's brother, Peter, reports of medical studies and medical treatises concerning the issue of exposure to benzene (a component of Agent Orange) and the development of myelodysplastic syndrome (MDS) and acute myeloid leukemia (AML). Your attorney also submitted copies of previous Board of Veterans Appeals decisions related to this topic and two letters from physicians who treated Mr. Venter, Dr. Thomas Duffy and Dr. Richard Stone. You testified that you were married to Mr. Venter for 35 years and have two adult children. You testified that he worked as a banker following his service in Vietnam. He was physically fit and active, ate healthy foods and did not smoke. You testified that you do not know of any other members of his family who have had cancer. You reported that you are not aware that he had any exposure to benzene other than his exposure to Agent Orange in Vietnam. You testified that he was diagnosed with MDS and AML in July 2011. You stated that even after receiving this diagnosis, Mr. Venter told you he would do it all again, as he loved the Navy.

Mr. Thompson testified that he knew Mr. Venter through the Navy Reserve and as a social friend, in excess of 35 years. He reported that he was in the Reserve with Mr. Venter and together that performed the required annual fitness tests and Mr. Venter never had a problem with any aspect of the test requirements. He also testified that Mr. Venter worked as a commercial banker and an investment banker.

JOSIAH B. VENTER

Page 3 of 6

Service records establish that Mr. Venter served in Vietnam on active duty with the US Navy. Therefore, his inservice exposure to herbicides is conceded. The literature establishes that benzene is a chemical component of Agent Orange.

Treatment records from Yale New Haven Hospital show that Mr. Venter was diagnosed with myelodysplastic syndrome (MDS) and acute myeloid leukemia (AML) in July 2011. His cancer remained active until his death from pneumonia due to respiratory failure due to MDS/AML on October 2, 2011. .

Letter from Richard M. Stone MD, who is Professor of Medicine at Harvard Medical School and the Director of the Adult Leukemia Program at Dana-Farber Cancer Institute, indicates that he reviewed the records in Mr. Venter's VA claims file and treatment records from Mr. Venter's hospitalization at Yale-New Haven Hospital for treatment of myelodysplastic syndrome (MDS) and acute myeloid leukemia (AML). Dr. Stone made a review of the medical literature and conducted an independent analysis utilizing his professional experience in study and treating leukemic disorders at Dana Farber. Dr. Stone concluded: "in light of the medical literature, the timing of Mr. Venter's exposure to Agent Orange, the frequency of his exposure, his age at onset of MDS and the absence of risk factors for MDS/AML in his lifestyle, I concluded that Mr. Venter's MDS/AML was more likely than not caused by his exposure to Agent Orange."

Letter from Thomas Patrick Duffy, MD, who is a Professor of Medicine (Hematology) at Yale University School of Medicine and the Smilow Cancer Hospital at Yale-New Haven Hospital, indicates that he reviewed the pertinent records in Mr. Venter's VA claims file and personally treated Mr. Venter at Yale New Haven Hospital for his myelodysplastic syndrome (MDS), which rapidly progressed to acute myeloid leukemia (AML). He also reviewed the relevant medical literature, which he indicates shows that benzene exposure is an accepted precursor of MDS and complex acute leukemia like AML, and benzene is a chemical element of Agent Orange. Dr. Duffy states: "It is my professional opinion that it is more likely than not that Mr. Venter's repeated exposure to Agent Orange fog during his service in Vietnam was the primary cause of his MDS/AML".

Service connection for the purposes of accrued benefits for MDS/ Acute Myeloid Leukemia has been established as directly related to military service. As the evidence establishes that Mr. Venter was exposed to Agent Orange, which contained benzene, during his active military service, and there are two objective medical opinions from physicians who are cancer specialists linking Mr. Venter's development of MDS/AML to his exposure to benzene, service connection is granted.

An evaluation of 100 percent is assigned from September 30, 2011, the date of receipt of Mr. Venter's claim.

We have assigned a 100 percent evaluation for his acute myeloid leukemia based on:

- Active disease

This is the highest schedular evaluation allowed under the law for this condition.

This disability is not specifically listed in the rating schedule; therefore, it is rated analogous to a disability in which not only the functions affected, but anatomical localization and symptoms, are closely related.

2. Service connection for the cause of death.

The cause of death is recorded as: pneumonia due to respiratory failure due to myelodysplastic syndrome (MDSI)/acute myeloid leukemia (AML). Service connection for the cause of the veteran's death is granted since evidence shows that it was related to military service.

At your personal hearing, your attorney submitted a number of additional documents, including copies of service personnel records, a letter from Mr. Venter's brother, Peter, reports of medical studies and medical treatises concerning the issue of exposure to benzene (a component of Agent Orange) and the development of myelodysplastic syndrome (MDS) and acute myeloid leukemia (AML). Your attorney also submitted copies of previous Board of Veterans Appeals decisions related to this topic and two letters from physicians who treated Mr. Venter, Dr. Thomas Duffy and Dr. Richard Stone. You testified that you were married to Mr. Venter for 35 years and have two adult children. You testified that he worked as a banker following his service in Vietnam. He was physically fit and active, ate healthy foods and did not smoke. You testified that you do not know of any other members of his family who have had cancer. You reported that you are not aware that he had any exposure to benzene other than his exposure to Agent Orange in Vietnam. You testified that he was diagnosed with MDS and AML in July 2011. You stated that even after receiving this diagnosis, Mr. Venter told you he would do it all again, as he loved the Navy.

Mr. Thompson testified that he knew Mr. Venter through the Navy Reserve and as a social friend, in excess of 35 years. He reported that he was in the Reserve with Mr. Venter and together that performed the required annual fitness tests and Mr. Venter never had a problem with any aspect of the test requirements. He also testified that Mr. Venter worked as a commercial banker and an investment banker.

JOSIAH B. VENTER

Page 5 of 6

Service records establish that Mr. Venter served in Vietnam on active duty with the US Navy. Therefore, his inservice exposure to herbicides is conceded. The literature establishes that benzene is a chemical component of Agent Orange.

Treatment records from Yale New Haven Hospital show that Mr. Venter was diagnosed with myelodysplastic syndrome (MDS) and acute myeloid leukemia (AML) in July 2011.

Certificate of death shows that Mr. Venter passed away on October 2, 2011. Cause of death was pneumonia due to respiratory failure due to MDS/AML.

Letter from Richard M. Stone MD, who is Professor of Medicine at Harvard Medical School and the Director of the Adult Leukemia Program at Dana-Farber Cancer Institute, indicates that he reviewed the records in Mr. Venter's VA claims file and treatment records from Mr. Venter's hospitalization at Yale-New Haven Hospital for treatment of myelodysplastic syndrome (MDS) and acute myeloid leukemia (AML). Dr. Stone made a review of the medical literature and conducted an independent analysis utilizing his professional experience in study and treating leukemic disorders at Dana Farber. Dr. Stone concluded: "in light of the medical literature, the timing of Mr. Venter's exposure to Agent Orange, the frequency of his exposure, his age at onset of MDS and the absence of risk factors for MDS/AML in his lifestyle, I concluded that Mr. Venter's MDS/AML was more likely than not caused by his exposure to Agent Orange."

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As the evidence establishes that Mr. Venter was exposed to Agent Orange, which contained benzene, during his active military service, and that he passed away due to MDS/AML, and there are two objective medical opinions from physicians who are cancer specialists linking Mr. Venter's development of MDS/AML to his exposure to benzene, service connection is granted for the cause of death.

3. Eligibility to Dependents' Educational Assistance under 38 U.S.C. chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a veteran who was discharged under other than dishonorable conditions; and, has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as: missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a foreign government or power.

Basic eligibility to Dependents' Education Assistance is granted as the evidence shows the veteran died as a result of a service-connected disability.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, www.va.gov.

Decision Review Officer Decision		<i>Department of Veterans Affairs Hartford Regional Office</i>		Page 1 of 2 11/26/2012	
NAME OF VETERAN JOSIAH B. VENTER		VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA AGENT OR PVT ATTY- EXCLUSIVE CONTACT NOT REQUESTED	COPY TO CHAMPVA

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
12/15/1967	12/14/1970	Navy	Honorable

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	1		None

FOR PAYMENT OF ACCRUED BENEFITS ONLY

This rating was prepared after the veteran's death and is based on evidence in file at the time of death.

JURISDICTION: Personal Testimony Received 07/10/2012

ASSOCIATED CLAIM(s): 174; Formal Hearing by DRO; 03/27/2012

SUBJECT TO COMPENSATION (I.S.C)

7799-7703

MDSI/ ACUTE MYELOID LEUKEMIA [Agent Orange - Vietnam/Other/
Unknown-Agent Orange]
Service Connected, Vietnam Era, Incurred
Static Disability
100% from 09/30/2011
Original Date of Denial: 02/17/2012

COMBINED EVALUATION FOR COMPENSATION :

100% from 09/30/2011

DEATH DECISIONS (1d. SC Vietnam Era)

Grant, SC Death, Primary. Cause of death: pneumonia due to respiratory failure due to myelodysplastic syndrome (MDSI)/acute myeloid leukemia (AML) [Agent Orange - Vietnam/Other/Unknown-Agent Orange]

ANCILLARY DECISIONS

Basic Eligibility under 38 USC Ch 35

Decision Review Officer Decision		<i>Department of Veterans Affairs Hartford Regional Office</i>		Page 2 of 2 11/26/2012
NAME OF VETERAN JOSIAH B. VENTER	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA AGENT OR PVT ATTY- EXCLUSIVE CONTACT NOT REQUESTED	COPY TO CHAMPVA

S. A. LABINS, DRO

