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ORDER

Entitlement to service connection for type 2 diabetes mellitus is granted.

Entitlement to service connection for Parkinson's disease is granted.

FINDINGS OF FACT

1. Grounds keeping spraying near the Veteran during service in Guam exposed him to an herbicide containing dioxin; that herbicide exposure led to his type 2 diabetes mellitus.

2. Grounds keeping spraying near the Veteran during service in Guam exposed him to an herbicide containing dioxin; that herbicide exposure led to his Parkinson's disease.

CONCLUSIONS OF LAW

1. The Veteran's diabetes is attributable to herbicide exposure during service. 38 U.S.C. §§ 1110, 1116, 1131, 5107 (2012); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2017).

2. The Veteran's Parkinson's disease is attributable to herbicide exposure during service. 38 U.S.C. §§ 1110, 1116, 1131, 5107; 38 C.F.R. §§ 3.303, 3.307, 3.309.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

1. Diabetes

The Veteran contends that in service, during temporary duty (TDY) in Guam in August 1965, he was exposed to herbicides such as Agent Orange. He contends that the herbicide exposure caused type 2 diabetes mellitus that was diagnosed after his service.

Service connection may be established on a direct basis for a disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C. §§ 1110, 1131; 38 C.F.R. § 3.303. Service connection may also be granted for any disease diagnosed after service when all the evidence establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d). In general, service connection requires (1) evidence of a current disability; (2) medical evidence, or in certain circumstances lay evidence, of in-service incurrence or aggravation of a disease or injury; and (3) evidence of a nexus between the claimed in-service disease or injury and the current disability. See *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004).

Service connection for certain chronic diseases, including diabetes mellitus, may be established based upon a legal presumption by showing that the disease manifested itself to a degree of 10 percent disabling or more within one year from the date of discharge from service. 38 U.S.C. §§ 1112, 1137 (2012); 38 C.F.R. §§ 3.307(a) (3), 3.309(a).

Under certain circumstances, service connection for specific diseases, including type 2 diabetes mellitus, may be presumed if a veteran was exposed during service to certain herbicides, including those containing dioxin. 38 U.S.C. § 1116; 38 C.F.R. §§ 3.307, 3.309(e). The relevant herbicide agents are those used in support of operations in Vietnam, specifically: 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; and picloram. 38 C.F.R. § 3.307(a)(6). If a veteran was exposed to such an herbicide agent during service, service connection for type 2 diabetes will be presumed if the diabetes becomes manifest to a degree of 10 percent disabling at any time after service. 38 C.F.R. §§ 3.307(a)(6)(ii), 3.309(e).

The Board must assess the credibility and weight of all the evidence, including the medical evidence, to determine its probative value, accounting for evidence which it finds to be persuasive or unpersuasive, and providing reasons for rejecting any evidence favorable to the claimant. See *Masors v. Derwinski*, 2 Vet. App. 181 (1992); *Wilson v. Derwinski*, 2 Vet. App. 614, 618 (1992); *Hattlestad v. Derwinski*, 1 Vet. App. 164 (1991); *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990). Equal weight is not accorded to each piece of evidence contained in the record; every item of evidence does not have the same probative value. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a claim, VA shall give the benefit of the doubt to the claimant. 38 U.S.C. § 5107. To deny a claim on its merits, the evidence must preponderate against the claim. *Aleman v. Brown*, 9 Vet. App. 518, 519 (1996), citing *Gilbert*, 1 Vet. App. at 54.

The Veteran does not state that his type 2 diabetes became manifest during service or during the year following his separation from service. His service treatment records do not contain any diagnosis or suggestion of type 2 diabetes. He has not identified any medical treatment during the year following his service. Private and VA medical records indicate that his diabetes was diagnosed in about 2003. The preponderance of the evidence, then, is against service connection for his diabetes on a direct basis. As his diabetes had onset many years after service, service connection may not be presumed for it as a chronic disease under 38 C.F.R. § 3.309(a). A veteran who served on active duty in the Republic of Vietnam during the period from January 9, 1962, to May 7, 1975, shall be presumed to have been exposed during that service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to herbicides during service. 38 C.F.R. § 3.307(a)(6)(iii). The Veteran does not report, and his service records do not reflect, that he served in Vietnam. He did not have service in a location that provides for a presumption that he was exposed to herbicide.

The Veteran reports that he had TDY in Guam, and was exposed to herbicides there. VA has not established a presumption of herbicide exposure with service in Guam. The Board is considering his herbicide exposure claim based on the evidence.

The Veteran's service records show that he worked in aircraft repair. In August 1965 he had an operational deployment. An August 1965 service memorandum states that, for four days, the Veteran and other listed servicemen on an aircraft maintenance mission were not able to use government quarters at Marbo, Guam, where there is an annex of Andersen Air Force Base (AFB). Other service memoranda show that he was commended for providing maintenance support to three consecutive missions of a task force that operated in Guam.

In a January 2012 claim, the Veteran wrote that in service he had TDY in Guam. He stated that while he was there herbicide defoliants were sprayed at the edges of the airfield where he was assigned. He noted that he and others slept on the wings of airplanes that were parked at the edges of the airfield.

In a June 2013 statement, the Veteran wrote that in August 1965 he and others had TDY in Guam. He indicated that his duties were servicing aircraft. He reported that an officer concluded that quarters at the Marbo Annex were too far away from their duties at Andersen AFB. He stated that there were no quarters available at Andersen, however, so the officer had him and others use an airplane as quarters, and they slept on the wings. He stated the airplane was parked near the edge of the air base, with its tail extending over vegetation beside the tarmac. He wrote that the area directly behind the plane was sprayed with an herbicide to control plant growth. He stated that during the spraying he was outside the plane and very close to the spray and mist.

In February 2016, the Veteran wrote that in August 1965 he and others were deployed to Andersen AFB in Guam for about a week. He related that his duties were servicing airplanes. He stated that the planned sleeping quarters originally planned for them were too far from the base, so they slept on their airplane, which was parked near the base perimeter and near vegetation. He reported that on two occasions he witnessed spraying of the area around the airplane. He indicated that he understood the spraying to be herbicide to control plant growth. He related that he was close to the spraying and he smelled a chemical odor after the spraying.

In April 2016 the Veteran submitted a December 2003 a United State (U.S.) Environmental Protection Agency (EPA) Superfund report regarding cleanup of two dumpsites at Andersen AFB in Guam. The report listed constituents of concern (COCs) found in surface and subsurface soil at the dumpsites. The COCs included dioxin. The engineer who wrote the report found that materials at the dumpsites "may pose safety risks to human health and the environment." The author indicated that excavation and offsite disposal was the preferred cleanup alternative.

Correspondence in the claims file reflects that, in 2016, a staff member of a Department of Veterans Affairs (VA) Regional Office (RO) contacted the VA Agent Orange Mailbox. A Mailbox staff member stated that the U.S. Department of Defense (DoD) had provided VA information about use of tactical herbicides. The Mailbox staffer stated that the DoD information did not report testing, storage, or use of tactical herbicides on Guam. The Mailbox staffer noted that, at military bases in Guam and throughout the world, there may have been small scale use of herbicides for brush or weed clearing. The Mailbox staffer stated that the chemical content of any herbicides used in such non-tactical activities could not be known.

The Mailbox staffer noted that in 2010 VA had sought information from the EPA. An EPA staff member who managed cleanup of military sites in Guam replied that he had not seen any report identifying Agent Orange on Guam. The EPA staffer stated that trichlorethylene (TCE) had been found in ground water beneath the former Naval Air Station on Guam, and was thought be attributable to the washing of airplanes. The Mailbox staffer concluded that VA inquiries had not produced evidence supporting dioxin contamination on Guam.

In July 2016, an RO staff member concluded that there was insufficient information to ask the U.S. Army and Joint Services Records Research Center

(JSRRC) to seek information verifying the Veteran's claimed herbicide exposure on Guam.

In May 2017, the Veteran's representative provided arguments regarding his claims. The representative noted the Veteran's reports of being present at the spraying of substances on vegetation, and being near enough the smell the sprayed substances. The representative noted studies indicating that dioxins and other chemicals in herbicides are extremely toxic and that the toxicity decays very slowly. The representative argued that there is no clear distinction between herbicides used for tactical purposes and those used for grounds keeping.

The assembled service records and documents adequately corroborate the Veteran's TDY at Andersen AFB in Guam. VA research, with consultation with other government records, has not resulted in a clear finding that herbicides generally were used or stored at U.S. military sites on Guam. A VA researcher conceded that on bases, including Andersen, a history of brush or weed clearing with herbicides of unknown chemical content was possible. The 2003 EPA report found evidence of dioxins in soil at Andersen AFB, where the Veteran worked and slept during his TDY. The evidence does not support a likelihood that service in Guam generally included exposure to herbicides containing dioxin, but the evidence supports a significant possibility that such herbicides were used for grounds keeping. That is essentially the means of exposure the Veteran reported, so the evidence makes his exposure claim plausible. His accounts are consistent and detailed, which adds to their credibility. Regarding the exposure claim, on careful consideration, the persuasive weight of the supporting evidence balances that of the negative and absent evidence. Resolving reasonable doubt in the Veteran's favor, the Board accepts that in Guam he was near grounds keeping spraying, and was exposed to an herbicide containing dioxin. Having accepted that he was exposed in service to an herbicide containing dioxin, the Board presumes and grants service connection for his type 2 diabetes.

2. Parkinson's disease

The Veteran contends that herbicide exposure during service caused Parkinson's disease that was diagnosed after his service. Parkinson's disease is among the diseases, listed at 38 C.F.R. § 3.309(e), for which service connection is presumed if it manifests in a veteran who was exposed in service to any of the specified herbicide agents.

The Veteran does not state that his Parkinson's disease became manifest during his service. His service treatment records do not contain any diagnosis or suggestion of Parkinson's disease. Private and VA medical records reflect onset of tremors in 2006, and diagnosis of Parkinson's disease in December 2006. The preponderance of the evidence is against onset of his Parkinson's disease during service.

As noted above, the Board finds sufficient evidentiary support to accept the Veteran's claim that grounds keeping spraying near him during TDY in Guam exposed him to an herbicide containing dioxin. Based on that herbicide exposure the Board presumes and grants service connection for his Parkinson's disease.