



**BOARD OF VETERANS' APPEALS**  
**DEPARTMENT OF VETERANS AFFAIRS**  
**WASHINGTON, DC 20420**

IN THE APPEAL OF

[REDACTED]

[REDACTED]

IN THE CASE OF

[REDACTED]

DOCKET NO. 17-02 961

) DATE MARCH 15 2018

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On appeal from the  
Department of Veterans Affairs Regional Office in Louisville, Kentucky

**THE ISSUES**

1. Entitlement to service connection for glioblastoma of the left temporal lobe, to include as due to exposure to chemicals at Camp Lejeune, North Carolina.
2. Entitlement to special monthly compensation (SMC) based on the need for regular aid and attendance, or by reason of being housebound.

**REPRESENTATION**

Appellant represented by: Gordon A. Graham, Agent

**WITNESS AT HEARING ON APPEAL**

Appellant

IN THE APPEAL OF

IN THE CASE OF

ATTORNEY FOR THE BOARD

B. G. LeMoine, Associate Attorney

INTRODUCTION

The Veteran served on active duty from January 1961 to January 1965. The Veteran died in October 2017. The appellant is the Veteran's surviving spouse.

These matters come before the Board of Veterans' Appeals (Board) on appeal of a March 2015 rating decision by the Department of Veterans Affairs (VA) Regional Office (RO) in Louisville, Kentucky.

In April 2017, the appellant testified during a video conference hearing before the undersigned Veterans Law Judge. A transcript of the hearing is associated with the claims file. At the hearing, the appellant submitted additional evidence in support of her claim along with a waiver of initial Agency of Original Jurisdiction (AOJ) review in accordance with 38 C.F.R. § 20.1304 (c) (2017).

In January 2018, the appellant submitted additional evidence with a waiver of AOJ consideration. 38 C.F.R. § 20.1304 (c) (2017). Therefore, the Board may properly consider such newly received evidence.

This appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900 (c) (2017). 38 U.S.C. § 7107 (a) (2) (2012).

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#### FINDINGS OF FACT

1. The probative evidence of record is at least in relative equipoise as to whether the Veteran's glioblastoma of the left temporal lobe was caused by in-service exposure to chemicals at Camp Lejeune, North Carolina.
2. The evidence demonstrates that the Veteran required the regular aid and attendance of another person as a result of his service-connected disabilities.

#### CONCLUSIONS OF LAW

1. The criteria for service connection for glioblastoma of the left temporal lobe have been met. 38 U.S.C. §§ 1110, 1131, 1154, 5107 (2012); 38 C.F.R. §§ 3.102, 3.159, 3.303, 3.307, 3.309 (2017).
2. The criteria for special monthly compensation based on the need for aid and attendance have been met. 38 U.S.C. §§ 1114, 5107 (2012); 38 C.F.R. § 3.350 (2017).

#### REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

##### *VA's Duty to Notify and Assist*

With respect to the appellant's claims herein, VA has met all statutory and regulatory notice and duty to assist provisions. *See* 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5106, 5107, 5126 (West 2014); 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326 (2016); *see also Scott v. McDonald*, 789 F.3d 1375 (Fed. Cir. 2015).

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*Service Connection for Glioblastoma*

The appellant contends that the Veteran had glioblastoma that was directly related to his active service. Specifically, the appellant testified that the Veteran's glioblastoma of the left temporal lobe is directly related to his exposure to contaminated water at Camp Lejeune, North Carolina. *See*, April 2017 Board hearing transcript.

Service connection may be established for a disability resulting from disease or injury incurred in or aggravated by active military service. 38 U.S.C. § 1110 (2012); 38 C.F.R. § 3.303 (2017). To establish service connection for a disability, the appellant must show: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service. *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004).

As to a current disability, private treatment records reflect that the Veteran was diagnosed with glioblastoma of the left temporal lobe in September 2013. Accordingly, there is evidence of a current disability.

As to an in-service event, injury or disease, the Veteran's military records reflect that he was stationed at Camp Lejeune, North Carolina from May 1961 to July 1961 and from May 1963 to January 1965. As such, he is presumed to have been exposed to contaminated water.

With respect to a nexus between the Veteran's glioblastoma and active service, VA has determined that service connection may be granted on a presumptive basis for certain diseases associated with exposure to contaminants (defined as the volatile organic compounds trichloroethylene (TCE), perchloroethylene (PCE or PERC), benzene, and vinyl chloride) in the on-base water supply located at Camp Lejeune, even though there is no record of such disease during service, if they manifest to a

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compensable degree at any time after service, in a veteran, former reservist, or a member of the National Guard, who had no less than 30 days (consecutive or nonconsecutive) of service at the United States Marine Corps Base Camp Lejeune and/or Marine Corps Air Station New River in North Carolina, during the period beginning on August 1, 1953 and ending on December 31, 1987. 38 C.F.R. § 3.309 (f). This presumption may be rebutted by affirmative evidence to the contrary.

The following diseases are deemed associated with exposure to contaminated water at Camp Lejeune: kidney cancer, liver cancer, Non-Hodgkin's lymphoma, adult leukemia, multiple myeloma, Parkinson's disease, aplastic anemia and other myelodysplastic syndromes, and bladder cancer. *Id.* As such, glioblastoma is not a disease for which presumptive service connection based on exposure to contaminated water at Camp Lejeune may be granted. *Id.*

Notwithstanding the foregoing presumption provisions for exposure to contaminated water at Camp Lejeune, a claimant is not precluded from establishing service connection with proof of direct causation. *Combee v. Brown*, 34 F. 3d 1039, 1042 (Fed. Cir. 1994); *see also Ramey v. Gober*, 120 F. 3d 1239, 1247-48 (Fed. Cir. 1997), *aff'g Ramey v. Brown*, 9 Vet. App. 40 (1996); *Brock v. Brown*, 10 Vet. App. 155, 160-61 (1997).

To determine whether an etiological link exists between the Veteran's glioblastoma and his presumed in-service exposure to contaminated water, the Board turns to the competent medical evidence of record. In that regard, the Board notes that the record contains conflicting medical opinions. The United States Court of Appeals for Veterans Claims has stated that the probative value of medical opinion is based on the expert's personal examination of the patient, the physician's knowledge and skill in analyzing the data, and the medical conclusion that the physician reaches. Further, the credibility and weight to be attached to these opinions are within the province of the adjudicator. *See Guerrieri v. Brown*, 4 Vet. App. 467, 470-71 (1993). As such, the Board may appropriately favor the opinion of one competent

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medical authority over another. *See Owens v. Brown*, 7 Vet. App. 429, 433 (1995); *Wensch v. Principi*, 15 Vet. App. 362, 367 (2001).

Here, VA received letters from the Veteran's private physician, Dr. L. R., dated November 5, 2014 and in November 2015. Dr. L. R. stated that he is a board certified medical oncologist and that the Veteran had been a patient since September 2013. Dr. L. R. noted that the Veteran was diagnosed with glioblastoma in September 2013. Dr. L. R. opined that it is more likely than not that the Veteran's brain tumor is casually related to contaminated water exposure. As rationale, Dr. L. R. stated that the Veteran had no other known risk factors for glioblastoma. He further stated that the brain is a prime target of volatile organic compounds due to its high lipid content and rich blood supply.

VA received a letter from Dr. M. L., in January 2018. Dr. M. L. noted that he reviewed the Veteran's claims file to include his medical history. Dr. M. L. further noted that the Veteran was stationed at Camp Lejeune for twenty five months. Dr. M. L. opined that it is more likely than not that exposure to tetrachloroethylene at Camp Lejeune was a contributing cause of the Veteran's cancer. As rationale, Dr. M. L. stated that he reviewed the medical literature and it shows that an association between tetrachloroethylene and brain cancer has been established since the 1980s and 1990s.

The Veteran was provided a VA review of available records examination in February 2015. The VA examiner reviewed the record and opined that the Veteran's glioblastoma is less likely than not incurred in or caused by his in-service injury, event or illness. As rationale, the February 2015 VA examiner stated that the medical literature does not show a statistically significant risk for the development of glioblastoma with exposure to contaminants in the water.

The Veteran was provided a second VA review of available records examination in October 2016. The VA examiner reviewed the record and opined that the Veteran's

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glioblastoma is less likely than not caused by or the result of exposure to water contaminants at Camp Lejeune. As rationale, the October 2016 VA examiner stated that glioblastoma is a relatively rare malignance whose few known risk factors do not include exposure to the contaminants found at Camp Lejeune. The VA examiner also discussed the Veteran's other possible risk factors for glioblastoma, including age, sex and past history of smoking.

The Veteran was provided a Veteran's Health Administration (VHA) advisory medical opinion by an oncologist in August 2017. The physician who provided the opinion reviewed the record and noted the Veteran's September 2013 diagnosis of glioblastoma of the temporal lobe. The physician opined that it is less likely than not that the Veteran's glioblastoma is related to active service, to include exposure to contaminated water at Camp Lejeune. As rationale, the physician stated that the primary chemical contaminants at Camp Lejeune are not associated with glioblastoma in humans. The physician further noted that VA published a final rule, regarding presumptive service connection for certain diseases associated with contaminants present in the water supply at Camp Lejeune and glioblastoma is absent from that list.

The Board finds that all the opinions of record, positive nexus and negative nexus, are entitled probative weight because they are based on accurate understanding of the Veteran's medical history and are supported by at least some rationale.

However, the Board finds that the VA negative opinions and VHA negative opinion are entitled diminished probative weight because the examiners did not provide adequate support for the rationales provided. Specifically, the VA examiners and the VHA examiner did not adequately discuss whether the Veteran's glioblastoma is directly related to his presumed in-service exposure to contaminants while stationed at Camp Lejeune. *See Combee*, 34 F. 3d at 1042. The February 2015 VA examiner recorded the Veteran's history of glioblastoma and stated that the medical literature was reviewed. The February 2015 VA examiner concluded that the

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medical literature does not show a statistically significant risk for development of glioblastoma with exposure to the contaminants in the water in Camp Lejeune. However, the February 2015 VA examiner did not discuss the Veteran's two-year exposure to contaminants while stationed at Camp Lejeune. The October 2016 VA examiner listed the possible risk factors the Veteran had relating to glioblastoma. However, the October 2016 VA examiner also did not discuss the Veteran's two-year exposure to contaminants while stationed at Camp Lejeune. Finally, the August 2017 VHA examiner reviewed the previous VA examination reports and provided an update of the literature since October 2016. However, the updated literature reviewed by the VHA only applies to presumptive diseases from contaminated water supplies at Camp Lejeune. The VHA examiner did not discuss whether the Veteran's glioblastoma was directly related to his two-year exposure to contaminated water while stationed at Camp Lejeune.

Thus, the Board finds no reason to afford greater probative weight to the negative nexus opinions than to the September 2013 and December 2017 private physicians' positive nexus opinions. Accordingly, the Board finds that the evidence is at least in relative equipoise as to whether the Veteran's glioblastoma is related to his exposure to water contaminants while stationed at Camp Lejeune. Therefore, any remaining doubt must be resolved in the appellant's favor, and the Board concludes that entitlement to service connection for glioblastoma is warranted. 38 U.S.C. § 5107 (b); 38 C.F.R. § 3.102; *see also Gilbert v. Derwinski*, 1 Vet. App. 49, 55 (1990).

#### *Entitlement to Special Monthly Compensation*

SMC is payable in addition to the basic rate of compensation otherwise payable on the basis of degree of disability. *See* 38 U.S.C. § 1114; 38 C.F.R. § 3.350.

To receive special monthly compensation based on the need for aid and attendance, the claimant must be a patient in a nursing home on account of mental or physical



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incapacity; or be blind or so nearly blind as to have corrected visual acuity in both eyes of 5/200 or less or concentric contraction of the visual field to 5 degrees or less; or have a factual need for regular aid and attendance of another person. 38 U.S.C. §§ 1114 (l), 1502, 1521; 38 C.F.R. §§ 3.350 (b) (3), 3.351(b).

Factors considered to determine whether regular aid and attendance is needed include: inability to dress or undress oneself, or to keep oneself ordinarily clean and presentable; frequent need to adjust special prosthetic or orthopedic appliances which by reason of the particular disability requires aid (this does not include adjustment of appliances that persons without any such disability would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability to feed oneself through loss of coordination of upper extremities or through extreme weakness; inability to attend to wants of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect a claimant from the hazards or dangers incident to his daily environment. 38 C.F.R. § 3.352 (a).

It is not required that all of the disabling conditions enumerated in 38 C.F.R. § 3.352 (a) be found to exist before a favorable decision is permissible. Particular personal functions which the Veteran is unable to perform should be considered in connection with his condition as a whole. It is only necessary that the evidence establish that he is so helpless as to need regular aid and attendance, not that there is a constant need. 38 C.F.R. § 3.352 (a); *Turco v. Brown*, 9 Vet. App. 222 (1996). It is logical to infer, however, a threshold requirement that "at least one of the enumerated factors be present." *Turco*, 9 Vet. App. at 224. "Bedridden" will be that condition which, by virtue of its essential character, actually requires that the claimant remain in bed. The fact that a claimant has voluntarily taken to bed or that a doctor has prescribed rest in bed for a greater or lesser part of the day to promote convalescence or cure is insufficient. 38 C.F.R. § 3.352(a).

Where a Veteran does not meet the qualifications for aid and attendance, housebound benefits may be applicable. Housebound benefits are warranted if, in

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addition to having a single permanent disability rated at 100 percent disabling under the VA Schedule for Rating Disabilities (not including ratings based upon unemployability under 38 C.F.R. § 4.17), a Veteran: Has additional disability or disabilities independently ratable at 60 percent or more, separate and distinct from the permanent disability rated as 100 percent disabling and involving different anatomical segments or bodily systems, or, is “permanently housebound” by reason of disability or disabilities. 38 C.F.R. § 3.351 (d).

The housebound requirement is met when a Veteran is substantially confined to his dwelling or the immediate premises or, if institutionalized, to the ward or clinical area, and it is reasonably certain that the disability or disabilities and resultant confinement will continue throughout his lifetime. 38 C.F.R. § 3.351 (d).

The Veteran is currently service-connected for five disabilities; most important for this determination is his service-connected glioblastoma of the left temporal lobe, which the Board granted above.

At the April 2017 Board hearing, the appellant testified that due to the Veteran’s glioblastoma she bathed, fed and dressed the Veteran for the previous four years. The appellant further testified that the Veteran entered a hospice care facility in March 2017 since he was unable to get out of bed, turn over in bed or sit in a wheelchair without being strapped.

In September 2016, the Veteran was provided a VA examination for housebound status or permanent need for regular aid and attendance. The examiner noted that the Veteran is not currently hospitalized and that he is wheelchair bound. The examiner further noted that the Veteran spends “many hours in bed” and is unable to feed himself. Additionally, the examiner noted the Veteran is unable to prepare his own meals and that he requires assistance in bathing and tending to other hygiene needs. The examiner noted that the Veteran is not legally blind. The

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examiner noted that the Veteran "need[s] help in every daily activity" and that he is "always with [his] wife limited ability to leave his home."

The record reflects that the Veteran was not in a nursing home until eight months prior to his death. Therefore, for most of the period on appeal the Veteran was not a patient in a nursing home and did not have visual problems, the appellant is only eligible for aid and attendance benefits if the evidence shows that the Veteran had a factual need for the regular aid and attendance of another person.

Such need is shown. Factors to consider in determining whether regular aid and attendance is needed include an inability to dress or undress oneself, inability to keep oneself ordinarily clean and presentable, inability to feed oneself, an inability to attend to the wants of nature, and an incapacity which requires care or assistance to protect the Veteran from the hazards or dangers incident to his daily environment. 38 C.F.R. § 3.352 (a).

The evidence shows that the Veteran met these criteria. With regard to ability to dress and undress himself, the appellant testified in April 2017 that for the prior four years she was required to dress and undress the Veteran. Additionally, the September 2016 examiner noted that the Veteran needs assistance in his daily living, including dressing and undressing. The appellant and examiner also noted that the Veteran was unable to feed himself, bathe himself or attend to the wants of nature. The evidence also shows that the Veteran had difficulty ambulating, showing an incapacity to protect himself from the hazards or dangers incident to his daily environment. The evidence also shows that these problems stem from the Veteran's service-connected disabilities, most notably his service-connected glioblastoma.

As the evidence demonstrates that the Veteran had the factual need for the regular aid and attendance of another person, special monthly compensation based on the need for aid and attendance is warranted. As this is the greater benefit, entitlement:

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to special monthly compensation on the basis of housebound status is moot and will not be discussed.

ORDER

Entitlement to service connection for glioblastoma of the left temporal lobe, to include as due to exposure to chemicals at Camp Lejeune, North Carolina is granted.

Entitlement to special monthly compensation based on the need for aid and attendance is granted.

*U. R. Powell*

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U. R. POWELL

Veterans Law Judge, Board of Veterans' Appeals