



## **BOARD OF VETERANS' APPEALS**

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

████████████████████  
Represented by  
Gordon A. Graham, Agent

C ██████████  
Docket No. 20-10 650

DATE: July 31, 2020

### **ORDER**

Entitlement to service connection for prostate cancer is granted.

### **FINDING OF FACT**

1. The Veteran was stationed at Royal Thai Air Base (RTAB) at Takhli in Thailand during the Vietnam era.
2. The competent and credible evidence is at least in equipoise as to whether the Veteran was exposed to herbicides during his service in Thailand.
3. The Veteran's prostate cancer is presumed to have been incurred as a result of herbicide exposure.

### **CONCLUSION OF LAW**

The criteria for entitlement to service connection for prostate cancer have been met. 38 U.S.C. §§ 1110, 1112, 1113, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.

**REASONS AND BASES FOR FINDING AND CONCLUSION**

The Veteran served in the Air Force from September 1964 to August 1968 with service in Thailand during the Vietnam era. This matter comes before the Board of Veterans' Appeals (Board) on appeal from a September 2016 rating decision of a Department of Veterans Affairs (VA) Regional Office (RO).

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

**1. Entitlement to service connection for prostate cancer**

Service connection may be established for a disability resulting from disease or injury incurred in or aggravated by service. 38 U.S.C. §§ 1110, 1131; 38 C.F.R. § 3.303. Service connection for certain specified diseases, including prostate cancer, may be established on a presumptive basis if the Veteran served during specified time periods, was exposed to an herbicide agent, and the disease manifested to a degree of ten percent or more any time after service. 38 C.F.R. § 3.07(a)(6), 3.309(e).

A veteran who served in the Republic of Vietnam during the Vietnam era (January 9, 1962 and ending on May 7, 1975) shall be presumed to have been exposed to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. 38 U.S.C. § 1116(f); 38 C.F.R. § 3.307 (a)(6)(iii). However, the above statutory and regulatory provisions do not establish a presumption of exposure to herbicide agents based on service in Thailand.

VA has determined that there was significant use of herbicides on the fenced-in perimeters of military bases in Thailand for the purpose of eliminating vegetation and ground cover for base security purposes as evidenced in a declassified Vietnam era Department of Defense document entitled "Project CHECO Southeast Asia Report: Base Defense in Thailand." Special consideration of herbicide exposure on a facts-found or direct basis should be extended to those Veterans whose duties placed them on or near the perimeters of Thailand military bases anytime between February 28, 1961 and May 7, 1975. *See* Compensation and Pension Bulletin, May

2010. In such cases, herbicide exposure is conceded for individuals who served in the Air Force as security policemen, as security patrol dog handlers, as members of the security police squadron, or otherwise near the air base perimeter as shown by evidence of daily work duties, performance evaluation reports, or other credible evidence.

Upon review of the record, the Board acknowledges that the Veteran has been diagnosed with prostate cancer. Thus, the first criterion for establishing service connection has been met.

The Veteran's service personnel records show that he served in the Air Force and was stationed at the RTAB from 1967 to 1968. *See* DD Form 214; April 2017 Buddy Statement; Military Personnel Record. Therefore, the Veteran's period of Thailand service is within the February 28, 1961 to May 7, 1975 timeframe for special consideration of herbicide exposure on a facts-found or direct basis.

The Veteran provided lay statements indicating that he worked on the flight line as an airframe repairman. *See* February 2019 Lay Statement. The Veteran contends that, during his duties, the aircraft he repaired were covered with a sticky substance that was from the spraying of herbicides. *Id.*; *see also* April 2017 Buddy Statement. He also indicated that he attended shop parties and played football on the defoliated area near the bomb dump. *See* February 2019 Lay Statement. He further stated that he "took cigarette breaks approximately five to six times a day along the east side of the base adjacent to the runway as work permitted," which was in or on the perimeter area. *See* May 2020 Correspondence; *see also* RTAB Arial Photograph (showing an overview of the base, and the close proximity of location of the aircraft airframe repair areas to the base perimeter fence).

The Board considers the Veteran competent to give evidence about matters of which he has personal knowledge. For example, he is competent to describe his work duties as involving repairing aircraft covered in herbicide. *See Layno v. Brown*, 6 Vet. App. 465 (1994). The Board finds the Veteran's testimony to be consistent with his duties as an airframe repairman during his service in Thailand. Resolving reasonable doubt in the Veteran's favor, the Board finds that the Veteran's duties took him near the perimeter of the RTAB and that he was as likely as not exposed to herbicides while stationed in Thailand. Moreover, the record

clearly demonstrates that the Veteran has been diagnosed with prostate cancer. Accordingly, his prostate cancer is presumed to be related to herbicide exposure; thus, service connection is warranted.



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David Gratz  
Acting Veterans Law Judge  
Board of Veterans' Appeals

Attorney for the Board

G. N. Wilson, Associate Counsel

*The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.*