BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

DATE: May 31, 2022

ORDER

Service connection for hepatitis C and residuals, to include advanced liver disease/ F4 fibrosis, is granted.

FINDING OF FACT

The Veteran's hepatitis C and residuals, including advanced liver disease/F4 fibrosis, are etiologically related to his active service.

CONCLUSION OF LAW

The criteria for service connection for hepatitis C and residuals, to include advanced liver disease/ F4 fibrosis, have been met. 38 U.S.C. § 1110 (2012); 38 C.F.R. §§ 3.102, 3.303 (2019).

REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran served on active duty from May 1972 to January 1979, from December 1990 to July 1991, and from October 2000 to March 2001.

This appeal arises under the Appeals Modernization Act (AMA) 131 Stat. 1105 (2017).

In a January 2020 rating decision, the Regional Office (RO) denied the Veteran's claim for service connection for hepatitis C to include advanced liver disease/ F4 fibrosis. In April 2020, the Veteran filed a supplemental claim, VA Form 20-0995 for service connection for hepatitis C to include advanced liver disease/ F4 fibrosis cirrhosis. In a June 2020 rating decision, the RO again denied service connection for hepatitis C to include advanced liver disease/F4 fibrosis. The Veteran timely appealed the decision to the Board via an AMA Notice of Disagreement (VA Form 10182) and attachment, both received in July 2020, and requested direct review of the evidence considered by the RO. Accordingly, the Board has considered the evidence of record at the time of the June 2020 rating decision, and no additionally submitted evidence may be considered.

If new and relevant evidence, as defined in 38 C.F.R. § 3.2501(a)(1), is presented or secured with respect to the supplemental claim, the agency of original jurisdiction will readjudicate the claim taking into consideration all of the evidence of record.

Under the AMA, the Board is bound by favorable findings made by the RO. 84 Fed. Reg. 138, 167 (Jan. 18, 2019) (to be codified at 38 C.F.R. § 3.104(c)). In the June 2020 rating decision, the RO made the favorable finding of receiving new and relevant evidence. The below decision will therefore only address the claim for entitlement to service connection for hepatitis C and residuals, to include advanced liver disease/F4 fibrosis, on its merits.

SERVICE CONNECTION

Service connection will be granted if the evidence demonstrates that a current disability resulted from an injury or disease incurred in or aggravated by active military service. 38 U.S.C. § § 1110; 38 C.F.R. § 3.303(a).

Establishing service connection generally requires (1) evidence of a current disability; (2) medical or, in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and (3) medical evidence of a

nexus between the claimed in-service disease or injury and the present disability. *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004); *see Caluza v. Brown*, 7 Vet. App. 498, 506 (1995), aff'd per curiam, 78 F.3d 604 (Fed. Cir. 1996) (table); *see also Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004); *Hickson v. West*, 12 Vet. App. 247, 253 (1999); 38 C.F.R. § 3.303.

Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of the matter, the Secretary shall give the benefit of the doubt to the claimant. 38 U.S.C. § § 5107 (2012); 38 C.F.R. § 3.102 (2019); *see also Gilbert v. Derwinski*, 1 Vet. App. 49, 53 (1990).

Service connection for hepatitis C and residuals, to include advanced liver disease/ F4 fibrosis

The Veteran contends that he contracted hepatitis C during active military service as a result of being exposed to infected blood during extensive dental work, including a tooth extraction, from 1972-1978, receiving multiple vaccinations administered through jet injectors, when he entered the service in June 1972, exposure to contaminated blood from a blood transfusion received during right knee surgery in 1976, and exposure to contaminated blood when he came in contact with an injured soldier while stationed in Germany in 1974.

Service treatment records show the Veteran received 17 different vaccinations during the mid to late 1970's through vaccine jet injectors. They also show that he had dental work, including a tooth extraction in the 1970's. A March 1985 Report of Medical History notes a history of elevated liver enzymes, but indicates that the Veteran's hepatitis screening was negative at that time and liver function studies were within acceptable levels. Service treatment records from July and August 2000 also show documentation of elevated liver enzymes. Service treatment records also show the Veteran had right knee surgery in February 1976, but there is no indication that he received a blood transfusion at that time.

A December 2019 VA examiner opined that it was less likely than not that the Veteran's HCV and its F4 non-cirrhosis fibrosis occurred during or were caused by his military service. The examiner noted the Veteran's reported symptoms of right dull upper quadrant pain and fatigue, but noted she found inconsistencies in the Veteran's statements. The examiner explained that she could find no nexus for the Veteran's HCV diagnosed in 2012 to his time in service, as there was no incident or "HCV outbreak" that the Veteran could connect his HCV to. The examiner also noted that the Veteran had a hepatitis screening in March 1985, due to elevated liver enzymes which was negative and liver function studies were within acceptable levels. She also noted that elevated serum glutamic oxaloacetic transaminase (SGOT) (a blood test that measures liver enzymes) without high alanine transaminase (ALT) levels can indicate pancreatitis, heart damage, kidney disease, and muscle injuries; it is not solely a liver enzyme, but can also be released from other organs. She also noted that the Veteran actually has unrelated chronic illnesses that could cause fatigue. The examiner also noted that the Veteran was discovered to have HCV in 2012, but was unable to abstain from ethanol alcohol (ETOH) for two months so a liver biopsy could not be performed. Finally, he had a fibroscan, which showed he had F4, but had non-cirrhosis fibrosis. The Veteran was not able to be treated until 2016, which meant his liver was inflamed for four years. Therefore, the examiner concluded that, with the length of time it took for the Veteran to be treated for his hepatitis, due to his not being able to be sober for 2 months, and the unknown length of time he had been drinking prior to treatment, he would be expected to have some fibrosis. The examiner opined that any damage to the Veteran's liver was likely to have been due to the length of time it took for him to be treated for his hepatitis C, as he had difficulty being sober for two months, and therefore, the liver biopsy was never performed. The examiner did not discuss the Veteran's reported in-service risk factors for hepatitis C. As such, the Board finds the opinion incomplete, and therefore, inadequate for evaluation purposes.

In June 2020, the same VA examiner noted that some of the Veteran's reported risk factors for contracting hepatitis, including a blood transfusion, exposure to blood from an injured soldier in Germany, and sharing of razors, were not found in the service treatment records. The examiner also found that the private physician's statement that the Veteran has residual symptoms from hepatitis is not true because

the Veteran has other chronic medical conditions, to include heart disease (cardiomyopathy), which could also cause fatigue, a symptom the Veteran complained about. The examiner also noted that the Veteran's hepatitis had resolved. Based on these findings, the examiner concluded that her prior negative opinion had not changed. The Board notes that although the Veteran's hepatitis may have resolved in 2017, the Veteran is also claiming service connection for current residuals of his hepatitis C, including liver disease. Furthermore, the VA examiner did not discuss the Veteran's reported risk factors of being exposed to contaminated blood through jet gun injections and being exposed to hepatitis C during dental surgery in service. As such, the Board finds the opinion incomplete and therefore, inadequate for evaluation purposes.

A private physician, M.V.R., MD opined that it is more likely than not that the Veteran's hepatitis C was contracted during active duty, either due to immunizations he received from jet injectors, from dental work without body substance isolation precautions, or from razors used for shaving multiple soldiers in a herd setting, all of which have been documented to result in transmission of blood borne pathogens, such as hepatitis C in the medical literature. With regard to the Veteran's receipt of immunizations from jet injectors, the doctor noted that these injection devices have been documented to result in contamination of the injector with blood and transmission of blood borne pathogens, such as hepatitis. The doctor also noted that there are well-documented case reports of outbreaks of HCV, due to dental work and oral surgery during the 1970's, when the Veteran had his dental work done in the military.

The doctor noted that the Veteran has carried a diagnosis of chronic hepatitis C infection (Genotype 1a) since February 2012, with positive hepatitis C (HCV) antibody serology and elevated viral load. This was detected when he had elevated liver enzymes ALT/SGPT being modestly elevated and AST/SGOT normal. Service treatment records document that labs done in June 2000 revealed elevated liver enzymes, including AST/SGOT of 64 (normal <45) and SGPT/ALT of 203 (normal <75). The doctor also noted that hepatitis C antibody blood testing has only been available since 1990 and accurate tests for screening have been commercially available only since circa 1992. Prior to 1990, there was no test to identify hepatitis C infections. Furthermore, typically individuals infected with

hepatitis C go on to have chronic infections in 50-85% of cases, and of those patients who are chronically infected with hepatitis C (HCV), 5-30% go on to develop cirrhosis over a period of 20-30 years. The doctor noted further that symptoms of HCV are generally non-specific, with the most common being fatigue and sleep disturbances, and although the Veteran was relatively asymptomatic, he already had evidence of documented cirrhosis as determined by Metavir score equal to Stage F4 in June 2012. In this regard, the doctor noted that he disagreed with the VA examiner's finding in January 2020 that the Veteran had non-cirrhosis fibrosis, as the Metavir score at that time was consistent with cirrhosis, and the presence of cirrhosis suggests that he had the HCV infection for 30-40 years, which dates the infection to a period in the 1970's when the Veteran was in service.

The doctor also notes that the Veteran had no other risk factors for cirrhosis/hepatitis C according to the medical records, in that he drank minimally and never had a problem with alcohol. In this regard, the private doctor disagreed with the VA examiner's finding that the Veteran was unable to abstain from alcohol for 2 months and that his lack of abstinence resulted in an inability to perform a liver biopsy in 2012. According to the doctor, at that time the Veteran reported drinking 2 beers per week and reported that he wanted to wait until after the holidays before having the liver biopsy. The doctor noted also that medical records indicate the Veteran reported drinking 0.5-2 beers a day over the years and never had a serious problem with alcohol. The doctor noted that he had never seen a patient with the Veteran's drinking history develop cirrhosis from alcoholism. The doctor also pointed out that the Veteran had no piercings or tattoos, was never incarcerated, and never used intranasal or intravenous drugs.

Dr. M.V.R. concluded that, based on his medical records and results of laboratory tests and Metavir/Ultrasound findings in mid-2012, the Veteran was infected with hepatitis C for 3-4 decades, since the 1970's. The time course of his illness is consistent with infection in the timeframe of his active duty military service. He had complications of chronic hepatitis C infection with documented cirrhosis of the liver since 2012. Treatment of his HCV with Harvoni cleared his HCV infection in 2017. The Veteran has some known risk factors for hepatitis C during active duty, and these sources have been documented to result in transmission of blood borne pathogens, such as hepatitis C, in the medical literature.

The Veteran is competent to describe having received jet gun inoculations (and the Board has no reason to doubt that he did receive such inoculations) and there is a possibility that such inoculations could be linked to hepatitis C transmission. Furthermore, the Veteran is competent to report being exposed to bodily substances during dental surgery in service, and service treatment records document the surgery. In addition, the Veteran is competent to state that he shared razors in service.

The Board attempted to obtain a VA opinion in this case. Unfortunately, the opinions obtained in 2019 and 2020 are both incomplete, and therefore, inadequate. A private physician has opined that the Veteran's hepatitis C was contracted as a result of jet gun inoculations during military service or exposure to blood from sharing razors or bodily substances during dental surgery. The physician presented a thorough rationale for his opinion. Therefore, resolving reasonable doubt in the appellant's favor, service connection for hepatitis C is warranted. 38 U.S.C. § 5107(b) (2012).

PAULA B. McCARRON
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board F. Yankey, 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.