



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

IN THE APPEAL OF

[REDACTED]

XC [REDACTED]

IN THE CASE OF

[REDACTED]

DOCKET NO. [REDACTED]

) DATE

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**MAR 11 2014**

On appeal from the  
Department of Veterans Affairs Regional Office in Milwaukee, Wisconsin

**THE ISSUES**

1. Entitlement to service connection for the cause of the Veteran's death.
2. Entitlement to Dependency and Indemnity Compensation (DIC) under 38 U.S.C.A. § 1318.

**REPRESENTATION**

Appellant represented by: Wisconsin Department of Veterans Affairs

**WITNESSES AT HEARING ON APPEAL**

The appellant and her daughter

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[REDACTED]

IN THE CASE OF  
[REDACTED]

ATTORNEY FOR THE BOARD

C. Bosely, Counsel

INTRODUCTION

The Veteran had active service from April 1966 to April 1968. He died in December 2009. He received the Purple Heart medal. The appellant is his surviving spouse.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a November 2010 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in Milwaukee, Wisconsin.

The appellant testified before the undersigned in a hearing at the RO in July 2011. A transcript of the hearing has been associated with the claims file. After the hearing, the appellant submitted additional evidence with a waiver of RO consideration. *See* 38 C.F.R. § 20.1304(c). This evidence has been accepted into the record and will be fully considered.

FINDINGS OF FACT

1. The evidence is in equipoise in showing that the cause of the Veteran's death, squamous cell carcinoma of the esophagus, was as likely as not a result of his presumed Agent Orange exposure during service in the Republic of Vietnam during the Vietnam era.

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2. At her July 2011 Board hearing, which was after the appeal was transferred to the Board, but prior to the promulgation of a decision in the appeal, the appellant withdrew her appeal as to the claim of entitlement to DIC under 38 U.S.C.A. § 1318.

### CONCLUSIONS OF LAW

1. The criteria for establishing service connection for the cause of the Veteran's death have been met. 38 U.S.C.A. §§ 1101, 1110, 1116, 1310 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.312 (2013).
2. The criteria for withdrawal of an appeal by the appellant have been met as to the issue of entitlement to DIC under 38 U.S.C.A. § 1318. 38 U.S.C.A. § 7105(b)(2), (d)(5) (West 2002); 38 C.F.R. § 20.204 (2013).

### REASONS AND BASES FOR FINDINGS AND CONCLUSION

#### A. Cause of Death

The appellant contends that the cause of the Veteran's death, esophageal cancer, is due to Agent Orange exposure during his service in Vietnam.

\*  
Dr BASH Letter of Support \*

All material elements of this claim are in equipoise. First, the Veteran is presumed to have been exposed to Agent Orange in light of his confirmed service in the Republic of Vietnam during the Vietnam era. Second, the Certificate of Death shows that he died in December 2009; the immediate cause of death is listed as cardiopulmonary arrest; the underlying cause was metastatic esophageal cancer. His VA treatment records show that esophageal cancer, specifically squamous cell carcinoma, was diagnosed in July 2009 after complaints of dysphagia. Third, and

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finally, a VA oncologist wrote a letter in January 2012 carefully and thoroughly explaining what it is at least as likely as not that the squamous cell carcinoma of the esophagus, which resulted in the Veteran's death, is related to the Agent Orange exposure during his service in Vietnam.

This evidentiary record makes it as likely as not that a disability incurred in active service was a contributory cause of death. Accordingly, the claim is granted. 38 U.S.C.A. § 1310 (West 2002); 38 C.F.R. § 3.312; *see also* 38 C.F.R. §§ 3.307, 3.309.

The appellant has raised an alternative theory of entitlement involving 38 U.S.C.A. § 1151 (West 2002). As her claim is being granted pursuant to 38 U.S.C.A. § 1310, however, no further discussion of this alternative theory of entitlement is needed.

Because the benefit sought on appeal is granted in full, the Board finds that any errors in VA's duties to notify and assist are harmless and will not be discussed. *See* 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5107 (West 2002); 38 C.F.R. §§ 3.102, 3.103, 3.159 (2013).

**B. DIC under 38 U.S.C.A. § 1318**

The appellant also perfected an appeal as to the claim of entitlement to DIC under 38 U.S.C.A. § 1318. At the July 2011 Board hearing, however, this issue was expressly withdrawn on the record. 38 C.F.R. § 20.204(b). As such, there remain no allegations of errors of fact or law for appellate consideration as to that claim. Accordingly, the Board does not have jurisdiction to review the appeal, and it is dismissed.

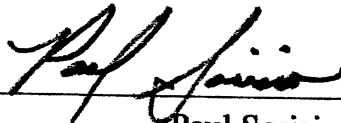
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ORDER

Entitlement to service connection for the cause of the Veteran's death, squamous cell carcinoma of the esophagus, is granted.

The appeal of the claim of entitlement to service connection for DIC under 38 U.S.C.A. § 1318 is dismissed.



Paul Sorisio

Acting Veterans Law Judge, Board of Veterans' Appeals

9-10-14