IN THE APPEAL OF

DOCKET NO. ) DATE )

On appeal from the
Department of Veterans Affairs Regional Office in Nashville, Tennessee

THE ISSUES

1. Entitlement to service connection for right foot hallux valgus, to include as secondary to service-connected left foot hallux valgus.

2. Entitlement to service connection for a cervical spine disability.

(The issues of entitlement to vocational rehabilitation training benefits under the provisions of Chapter 31 of Title 38 of the United States Code, entitlement to an initial rating in excess of 10 percent for hallux valgus, left foot, and entitlement to reimbursement of unauthorized medical expenses incurred at Methodist North Surgery Center on August 7, 2006 for service-connected left foot hallux valgus area are the subjects of separate decisions of the Board).

REPRESENTATION

Appellant represented by:
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WITNESS AT HEARING ON APPEAL

Appellant

ATTORNEY FOR THE BOARD

L. A. Rein, Counsel

INTRODUCTION

The Veteran had active service from April 1982 to November 1986. Thereafter, he served in the Naval Reserves until 1996.

This appeal to the Board of Veterans Appeals (Board) arises from a May 2003 rating action that denied service connection for right foot hallux valgus, and an October 2004 rating action that denied service connection for a cervical spine disability.

In February 2006, the Veteran testified at a hearing before a decision review officer at the RO. In March 2008, the Veteran testified at a hearing before the undersigned Veterans Law Judge at the RO.

By decision of February 2009, the Board denied service connection for right foot hallux valgus and a cervical spine disability. The Veteran appealed this decision to the United States Court of Appeals for Veterans Claims. In a February 2010 order, the Court granted a February 2010 Joint Motion to vacate the Board's decision, specific to these two claims for service connection, and remanded the matter to the Board for compliance with the instructions in the Joint Motion.
In April 2011, the Board, in pertinent part, remanded these issues for additional development. Thereafter, in a June 2012 supplemental statement of the case, the RO continued the denial of these claims and returned the case to the Board for additional appellate consideration.

FINDINGS OF FACT

1. The competent evidence of record is at least in equipoise as to whether the Veteran's right foot hallux valgus is related to his service-connected left foot hallux valgus.

2. The competent evidence of record is at least in equipoise as to whether the Veteran's current cervical spine disability is related to active service.

CONCLUSIONS OF LAW

1. Resolving all reasonable doubt in favor of the Veteran, the criteria for service connection for right foot hallux valgus, as secondary to service-connected left foot hallux valgus have been met. 38 U.S.C.A. §§ 1110, 1131 (West 2002 & Supp. 2012); 38 C.F.R. §§ 3.102, 3.303, 3.310 (2012).

2. Resolving all reasonable doubt in favor of the Veteran, the criteria for service connection for a cervical spine disability have been met. 38 U.S.C.A. §§ 1110, 1131 (West 2002 & Supp. 2012); 38 C.F.R. §§ 3.102, 3.303 (2012).
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REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

I. Duties to notify and assist


Given the favorable disposition of the Veteran's claims for service connection decided herein, the Board finds that all notification and development action needed to fairly adjudicate these claims has been accomplished.

II. Service connection

Service connection may be granted for disability resulting from disease or injury incurred in or aggravated during service. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. § 3.303 (2012). That determination requires a finding of current disability that is related to an injury or disease in service. Watson v. Brown, 4 Vet. App. 309 (1993); Rabideau v. Derwinski, 2 Vet. App. 141 (1992). Service connection may be granted for a disability diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disability is due to disease or injury that was incurred or aggravated in service. 38 C.F.R. § 3.303(d) (2012).

Service connection may be presumed for certain chronic diseases, including arthritis, which develop to a compensable degree within one year after discharge from service, even though there is no evidence of such disease during the period of service. That presumption is rebuttable by probative evidence to the contrary. 38 U.S.C.A. §§ 1101, 1112, 1113, 1137 (West 2002 & Supp. 2012); 38 C.F.R. 3.307, 3.309(a) (2012). However, as arthritis is not shown within a year after discharge from active service, the presumptions is not for application in this case. For such chronic diseases as specifically listed at 38 C.F.R. 3.309(a), including arthritis, service connection may also be established by chronicity and continuity of
symptomatology. *See* 38 C.F.R. § 3.303(b); *Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2013) (holding that the "chronic" in service and "continuous" post-service symptom presumptive provisions of 38 C.F.R. § 3.303(b) only apply to "chronic" diseases at 3.309(a)).

Specifically, for the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word "Chronic." When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim. 38 C.F.R. § 3.303(b).

Service connection may also be granted when a claimed disability is found to be proximately due to or the result of a service-connected disability, or when any increase in severity (aggravation) of a nonservice-connected disease or injury is found to be proximately due to or the result of a service-connected disability. 38 C.F.R. § 3.310; *Allen v. Brown*, 7 Vet. App. 439, 448 (1995) (en banc).

In determining whether service connection is warranted for a disability, VA is responsible for determining whether the evidence supports the claim or is in relative equipoise, with the Veteran prevailing in either event, or whether a preponderance of the evidence is against the claim, in which case the claim is denied. 38 U.S.C.A. § 5107 (West 2002); *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990).

A. Right foot hallux valgus

The Veteran contends that this right foot hallux valgus disability either had its onset in service, or is secondary to his service-connected left foot hallux valgus.
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Service treatment records show that in the Veteran's October 1986 self report of medical history at the time of separation from active service he indicated that he had foot trouble.

In April 1994 the Veteran was assessed with hallux valgus, left greater than right. In November 1994, the Veteran underwent surgery for diagnosed bilateral hallux valgus, right and left great toe. In February 1996, a Physical Evaluation Board (PEB), in pertinent part, diagnosed the Veteran with bilateral hallux valgus correction.

A July 2004 VA feet examination report reflects that the Veteran stated he was seen multiple times while onboard a ship in service for complaints of bilateral foot problems. He currently was having pain in the bilateral feet as well as stiffness and swelling. The diagnosis was residual hallux valgus, right foot. The VA examiner opined that the Veteran's condition was more likely than not a congenital-type problem, not related to his activities while in the military, particularly since there were no specific periods of injury. His condition, although likely painful, is not likely connected to his military service.

During a September 2006 VA examination, the Veteran reported no specific history of trauma to his right foot. The diagnosis was status post bunionectomy for hallux valgus deformity with transverse metatarsalgia second metatarsal head. After September 2006 VA examination, the physician opined that the right foot hallux valgus was not caused by or a result of the left foot hallux valgus and the change in gait related to the left hallux valgus. In November 2006, the same VA physician reiterated the prior medical opinion, adding that the development of hallux valgus had many etiologies, but that hallux valgus on one foot was not considered a reason for the development of hallux valgus deformity on the contralateral foot.

In an April 2008 private medical evaluation report, M. D., R.N., noted that the source of her information was based on the Veteran, his military service and medical records and all civilian medical and surgical records. She stated that the regulation shoes that the Veteran had to wear while stationed aboard ship in service, and the constant listing of the ship as he struggled to maintain his balance took an
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incredible toll on the wear and tear of his feet. She further asserted that bunions were most widely considered to be due to an imbalance in the forces that are exerted across the joint during walking, and that the resulting abnormal motion and pressure over several years led to instability in the joint, causing hallux valgus. She noted that certain activities put added pressure on the joint, and could increase the chance of bunions developing.

A May 2010 VA feet examination report reflects that the VA examiner reviewed the claims file thoroughly. The examiner noted that the Veteran underwent bilateral bunionectomies in 1994. The VA examiner opined that the Veteran's forefoot dysfunction was the result of his failed bunionectomy surgery.

In January 2011 private medical opinion C. B., M.D., stated that he had reviewed the Veteran's medical records, testimony, lay statement, personnel records, conducted his own patient interview and imaging based medical examination. He opined that it was at least as likely as not that the veteran's current right foot problems were due to his left foot abnormal gait and his in-service right foot injuries. He noted that the Veteran had an abnormal gait and limp since service due to his left foot disability. An abnormal gait is known to place abnormally high forces on the remaining joints and thus cause the remaining joints to experience abnormal accelerated wear and tear which leads to advanced for age degenerative arthritis. The Veteran's records do not support another more plausible etiology for his current right foot pathology or other risk factors (in or out of service) to explain his problems other than his service time experience. The time lag between injury in service and his years of abnormal gait and his current pathology is consistent with known medical principles and the natural history of this disease. He further opined that had he not had his service time left foot injury and his post service time abnormal gait that he would not have developed his current right foot arthritis.

In an August 2011 VA spine examination report, the examiner noted a review of the Veteran's claims file and reiterated history as provided by the Veteran and as noted in the file. The VA examiner noted that the Veteran had both hallux valgus deformities simultaneously. This is likely an underlying condition that has no relationship to his military service. Particularly, hallux valgus in one foot cannot
cause hallux valgus on another foot. Thus, to answer the question that his hallux valgus on one foot is related to the hallux valgus on the other, one is not causing the other.

In December 2011, the Veteran underwent an additional VA examination of his right foot. The VA examiner opined that the claimed condition was less likely as not incurred in or cased by the claimed in-service injury, event, or illness. The VA examiner stated that the Veteran did report an injury to his right foot in the letter by MS. Dyson in 2008. However, he did not describe it as a significant injury. For an injury to the foot to lead to hallux valgus, significant tendon disruption would have to occur. This injury would be too painful to bear weight and take 8-12 weeks to heal. No such injury is reported. The patient also does not report any problems with shoe wear or tight shoes in his records. These could lead to hallux valgus. Most hallux valgus is hereditary in nature and as the patient has equal disease on bilateral feet it is more likely than not that in the absence of severe trauma his disease is hereditary in nature and not aggravated or worsened by his time in the service. The VA examiner also opined that the claimed condition is less likely than not (less than 50 percent probability) proximately due to or the result of the Veteran's service connected condition. He stated that it has not been shown in the medical literature that developing hallux valgus in one foot leads to hallux valgus in the other foot.

In reviewing the evidence of record, the Board is aware of the conflicting medical evidence as to whether there is a relationship between the Veteran's right foot hallux valgus and his service-connected left foot disability. However, the Board concludes that in this case, as it now stands, the evidence of record is at least in relative equipoise. In this case, the Board finds that none of the medical nexus opinions are more probative than the other opinions of record. Rather, each medical opinion is supported by some reasoned analysis of medical facts. See Neives-Rodriguez v. Peake, 22 Vet. App. 295, 304 (2008) (the most of the probative value of a medical opinion comes from the rationale that the examiner provided in support of his/her medical opinion). Here, the medical nexus opinions in this case are at least in equipoise as to whether the Veteran's service-connected left foot disability caused his right foot hallux valgus.
When evidence is in relative equipoise, reasonable doubt must be decided in the appellant's favor. Accordingly, resolving all reasonable doubt in favor of the Veteran, the Board finds that service connection for right foot hallux valgus, as secondary to the Veteran's service-connected left foot disability, is warranted. 38 U.S.C.A. § 5107(b) (West 2002); Gilbert v. Derwinski, 1 Vet. App. 49 (1990).

B. Cervical spine

The Veteran contends that he has a cervical spine disability due to his in-service head injuries.

A review of the service treatment records shows that in July 1982 the Veteran was seen with a 5-day history of having struck his head on the side of a swimming pool, with moderate pain at the base of the neck. The assessment was trapezius muscle spasm. In November 1985, he was seen after striking his head on a pipe while running down a passageway. He was treated for a laceration and bleeding. In January 1986, the Veteran complained of frontal headaches every day. On October 1986 separation examination, it was noted that the Veteran had no sequelae from head trauma in 1982 and 1985.

Post service records show that in March 1996, the Veteran complained of neck pain that was attributed to a recent car accident.

A July 2001 MRI report and 2001 medical records from Dr. Brophy first show that the Veteran was diagnosed with degenerative disc disease of the cervical spine.

During a February 2006 RO hearing, the Veteran testified that while onboard a ship he was running to put a fire out and hit an overhead pipe that knocked him out. He stated he split his head open and it was stitched. He stated that in March 2003 he started having surgical injections for his neck pain.

During a September 2006 VA spine examination, the Veteran reiterated his contentions as to sustaining two separate injuries to his head and that he has had
neck pain ever since. The VA examiner diagnosed degenerative disk disease of the cervical spine. The VA physician opined that it was not at least as likely as not that the head injuries that the Veteran sustained in service would result in the eventual development of the current cervical spine degenerative disc disease (DDD), or that those in-service head injuries contributed to that DDD. In November 2006, the same VA physician stated that degenerative changes in the cervical spine had multiple etiologies, that there was no radiographic evidence of cervical spine injury in military service, and that degenerative changes in a man of the veteran's age were not unreasonable on radiographic examination. As a result, he opined that it was not at least as likely as not that the head injuries that the Veteran sustained in service would result in the eventual development of the current cervical spine DDD.

In April 2008, M. D., R.N., opined that there was no question that the veteran's 1985 in-service head injury was the beginning of his years of neck pain and related surgeries. She stated that cervical pain causes severe headaches and pain radiating to shoulders, arms and scapulae as well as radiculopathy resulting in an inability to function in a normal way. She opined that the Veteran symptoms were all consistent with the injury he suffered when he struck his head against a low hanging pipe that rendered him unconscious for a few minutes. She furthered that there is no question that this was the beginning of his years of neck pain and related surgeries and all of this was done in the line of duty. The diagnosis was cervical neck pain secondary to old trauma.

In January 2011 private medical opinion, C. B., M.D., stated that he had reviewed the Veteran's medical records, testimony, lay statement, personnel records, conducted his own patient interview and imaging based medical examination. Dr. C. B. opined that it was at least as likely as not that the veteran's current neck problems were due to his 2 traumatic head injuries during military service. He noted that the neck pain followed his head injuries and the Veteran has had neck pain ever since. He likely has cervical radiculopathy as per his clinical records and symptoms. Dr. C.B. then cites to medical literature in support of his opinion and findings.
In an August 2011 VA spine examination report, the examiner noted a review of the Veteran's claims file and reiterated history as provided by the Veteran and as noted in the file. The Veteran complained of neck pain off and on for several years following the injury in service where he ran into a steel beam. The VA examiner commented that the Veteran's head injuries were low injury in nature as the Veteran mostly hit his head. Additionally, unless there was a fracture, which there was not, it is not really even shown that mild trauma to the neck or back has been associated with increasing degenerative changes later. Thus, he opined that this head trauma is not related to his degenerative cervical spine disorder.

In December 2011, the Veteran underwent an additional VA examination of his spine. The VA examiner opined that the claimed condition was less likely as not incurred in or caused by the claimed in-service injury, event, or illness. The patient claims that his cervical disk and cervical degenerative problems were caused by his time in the service. After thorough review of his records and C file, he stated that he found no injury or repetitive microtrauma documented that would have led to these disorders. Most of the aforementioned issues in the general population are idiopathic in nature. High velocity trauma is also known to cause the cervical spine to degenerate due to fracture and or ligamentous and disk injury. The patient has neither of these documented in his records and does not report anywhere having an injury high energy enough to cause structural damage to his cervical spine. Therefore, I find it less likely than not that his cervical spine issues were related to his time in service.

In reviewing the evidence of record, the Board is aware of the conflicting medical evidence as to whether the Veteran's cervical spine disability is related to active service. However, the Board concludes that in this case, as it now stands, the evidence of record is at least in relative equipoise as to whether the Veteran's cervical spine disability is related to active service. In this case, the Board finds that none of the medical nexus opinions are more probative than the other opinions of record. Rather, each medical opinion is supported by some reasoned analysis of medical facts. See Neives-Rodriguez v. Peake, 22 Vet. App. 295, 304 (2008) (the most of the probative value of a medical opinion comes from the rationale that the examiner provided in support of his/her medical opinion). Here, the medical nexus
opinions in this case are at least in equipoise as to whether the Veteran's current cervical spine disability are related to injuries to his head in service.

Additionally, the Board finds that the Veteran is competent to report that his neck symptoms began in service. Barr v. Nicholson, 21 Vet. App. 303 (2007); Layno v. Brown, 6 Vet. App. 465 (1994); Jandreau v. Nicholson, 492 F.3d 1372 (Fed. Cir. 2007); Buchanan v. Nicholson, 451 F.3d 1331 (2006). Moreover, the Board considers the statements of the Veteran be credible as they are facially plausible, internally consistent, and consistent with the other evidence of record. Caluza v. Brown, 7 Vet. App. 498 (1995). Specifically, the Veteran's service treatment records show that the Veteran sustained two separate injuries to his head. Although the record contains no medical evidence of neck complaints or treatment for years after service discharge, the competent lay evidence of record shows credible assertions that the Veteran continued to struggle with neck symptoms after service.

For the foregoing reasons, the Board concludes that the balance of positive and negative evidence is at the very least in relative equipoise. Accordingly, resolving all reasonable doubt in favor of the Veteran, the Board finds that service connection for a cervical spine disability is warranted. 38 U.S.C.A. § 5107(b) (West 2002); Gilbert v. Derwinski, 1 Vet. App. 49 (1990).

ORDER

Service connection for right foot hallux valgus, to include as secondary to service-connected left foot hallux valgus, is granted.

Service connection for a cervical spine disability is granted.

F. JUDGE FLOWERS
Veterans Law Judge, Board of Veterans’ Appeals