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DOCKET NO. 94-33 061)
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On appeal from the
Department of Veterans Affairs (VA) Regional Office (RO)
in Winston-Salem, North Carolina

THE ISSUE

Entitlement to service connection for the cause of the
veteran's death.

REPRESENTATION

Appellant represented by: Michael E. Wildhaber, Attorney
at Law

ATTORNEY FOR THE BOARD

David A. Brenningmeyer, Counsel

INTRODUCTION

The veteran served on active duty from July 1948 to July
1968. He died in October 1993, and the appellant is his
widow.

By a decision entered in May 1994, the RO denied service
connection for the cause of the veteran's death. The
appellant appealed that decision to the Board of Veterans'
Appeals (Board), and the Board remanded the matter to the RO
for further development in May 1996. The case was returned
to the Board in December 1996, and the Board thereafter
denied the appeal by a decision entered in March 1997.

The appellant appealed the Board's decision to the United
States Court of Appeals for Veterans Claims (known as the
United States Court of Veterans Appeals prior to March 1,
1999) (Court). By an order dated in May 1999, the Court
vacated the Board's decision and remanded the matter for
further development and re-adjudication. In so doing, the
Court directed that action be taken to ensure compliance with
the Board's May 1996 remand order requesting a medical
opinion discussing the relationship between an August 1968
in-service diagnosis of hypertension and the cause of the
veteran's death. See *Stegall v. West*, 11 Vet. App. 268
(1998). The Court also directed the Board to discuss whether
the claim of service connection for the cause of the
veteran's death was well grounded, taking into consideration
the provisions of 38 C.F.R. §§ 3.303(b) and 3.309(a), and the
Court's decisions in *Brannon v. Derwinski*, 1 Vet. App. 314

(1991), and *Savage v. Cober*, 10 Vet. App. 488 (1997).

In August 1999, the Board contacted the appellant's attorney and advised him of the appellant's right to submit additional argument and evidence in support of the present appeal. Thereafter, in November 1999, additional argument and evidence was received at the Board, along with a waiver of RO review. See 38 C.F.R. § 20.1304(c) (1999).

FINDINGS OF FACT

1. The veteran died in October 1993. His death certificate shows that the cause of his death was cardiac arrest, due to myocardial infarction, due to morbid obesity.
2. Competent medical evidence has been received which indicates that it is very likely that the veteran's cardiovascular disease was precipitated by chronic hypertension.
3. Competent medical evidence has been received which indicates that chronic hypertension had its onset in service.

CONCLUSION OF LAW

The veteran's death can be attributed to service. 38 U.S.C.A. §§ 1110, 1112, 1131, 1310, 5107 (West 1991 & Supp. 1999); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310, 3.312, 20.1106 (1999).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

The appellant maintains that service connection should be granted for the cause of the veteran's death. She contends that the veteran's death from cardiac arrest and myocardial infarction can be attributed to hypertension that began in service.

Generally speaking, service connection is warranted where the evidence of record establishes that a particular injury or disease resulting in disability was incurred in the line of duty in the active military service or, if pre-existing such service, was aggravated thereby. 38 U.S.C.A. §§ 1110, 1131 (West 1991); 38 C.F.R. § 3.303(a) (1999). Service connection is also warranted where the evidence shows that a chronic disability or disorder has been caused or aggravated by an already service-connected disability. 38 C.F.R. § 3.310 (1999); *Allen v. Brown*, 7 Vet. App. 439 (1995). When disease is shown as chronic in service, or within a presumptive period so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date are service connected unless clearly attributable to intercurrent causes. 38 U.S.C.A. § 1112 (West Supp. 1999); 38 C.F.R. §§ 3.303(b), 3.307, 3.309 (1999).

The death of a veteran is considered as having been due to service when the evidence establishes that a service-

connected disability was either the principal or contributory cause of death. 38 C.F.R. § 3.312(a) (1999). A disability is considered the "principal" cause of death when that disability, "singly or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related thereto." Id. § 3.312(b). A "contributory" cause of death must have "contributed substantially or materially" to death, must have "combined to cause death," or must have "aided or lent assistance to the production of death." Id. § 3.312(c). Where a cause of death claim is premised on 38 U.S.C.A. § 1310 (West 1991), issues pertaining to whether a particular disease or injury was the principal or contributory cause of death are decided without regard to any disposition of those issues during the veteran's lifetime. 38 C.F.R. § 20.1106 (1999).

In the present case, the Board finds that the claim of service connection for the cause of the veteran's death is well grounded. 38 C.F.R. § 5107 (West 1991). This is so because competent medical evidence has been submitted which tends to link the veteran's death to disability incurred in service. See, e.g., *Caluza v. Brown*, 7 Vet. App. 498, 506 (1995), *aff'd per curiam*, 78 F.3d 604 (Fed. Cir. 1996) (table).

The Board finds, moreover, that the evidence supports an allowance of the claim. The veteran's death certificate shows that he died in October 1993, and that the cause of his death was cardiac arrest, due to myocardial infarction, due to morbid obesity. The record contains a June 1999 letter from a physician, Craig Bash, M.D., a Neuro-radiologist and Assistant Professor of Radiology and Nuclear Medicine at the Uniformed Services University of the Health Sciences, which indicates that it is very likely that the veteran's cardiovascular disease was precipitated by chronic hypertension. In the letter, Dr. Bash further opined that chronic hypertension had its onset in service. Inasmuch as Dr. Bash's opinion is clearly based on a review of the available medical evidence, and contains a discussion of that evidence, along with a complete statement of the reasons for his conclusions, the Board finds the opinion persuasive. Consequently, service connection is granted for the cause of the veteran's death.

In light of the Board's decision granting the benefit sought on appeal, further action on the directives contained in the Court's May 1999 order is unnecessary.

ORDER

Service connection for the cause of the veteran's death is granted.

MARK F. HALSEY
Member, Board of Veterans' Appeals

