



BOARD OF VETERANS' APPEALS
FOR THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON, DC 20038

Date: March 8, 2021

Dear Appellant:

A Veterans Law Judge at the Board of Veterans' Appeals made a decision on your appeal.

If you're satisfied with the decision, you don't have to do anything.

What's in the Board decision?

Your Board decision tells you which issue(s) were decided in your appeal. It explains the evidence, laws, and regulations the Veterans Law Judge considered when making their decision and identifies any findings that are favorable to you.

If your decision letter includes a "Remand" section, this means the judge is sending one or more issues in your appeal to your local VA office to correct an error the judge identified while reviewing your case. If an issue is remanded, it hasn't been decided and it can't be appealed yet. You'll receive a decision from the local VA office after they review the issue again.

What if I disagree with the decision?

If you disagree with the judge's decision, you can continue your appeal. See the letter included after your Board decision to learn more about the decision review options available to you.

What if I have questions?

If you have any questions or would like more information, please contact your representative (if you have one) or visit va.gov/decision-reviews/get-help. To track the status of your appeal, visit va.gov/claim-or-appeal-status/.

Sincerely yours,

N. Tann
Executive Director
Office of Appellate Support

Enclosures (2)



BOARD OF VETERANS' APPEALS
FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

Docket No. [REDACTED]
Advanced on the Docket

DATE: March 8, 2021

ORDER

Service connection for colon cancer is granted.

FINDING OF FACT

The Veteran's colon cancer is related to his conceded exposure to contaminated drinking water at Camp Lejeune.

CONCLUSION OF LAW

The criteria for entitlement to service connection for colon cancer are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309.

REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran had active duty in the U.S. Marine Corps from July 1953 to July 1956. The issue is on appeal from a July 2019 rating decision.

A rating decision was issued under the legacy system in September 2017. In August 2018, the Veteran elected to opt into the Rapid Appeals Modernization Program (RAMP) and selected the Higher-Level Review lane. The Agency of

Original Jurisdiction (AOJ) issued a RAMP Higher-Level Review decision in July 2019 continuing to deny service connection for colon cancer.

The Veteran appealed the July 2019 rating decision to the Board in December 2019 electing the Hearing docket through VA Form 10182. Therefore, the Board may only consider the evidence of record at the time of the RAMP opt-in, as well as any evidence submitted by the Veteran or his representative at the hearing or within 90 days following the hearing. 38 C.F.R. § 20.302(a).

In November 2020, the Veteran testified before the undersigned in a Board of Veterans' Appeals (Board) hearing. A transcript of the hearing is associated with the claims file. Additional evidence was not submitted for consideration following the hearing.

Service connection for colon cancer

The Veteran seeks service connection for colon cancer. Specifically, he asserts that his colon cancer is due to the contaminated drinking water at Camp Lejeune.

In the July 2019 rating decision on appeal, the Agency of Original Jurisdiction conceded exposure to Camp Lejeune Contaminated Water (CLCW) based on the Veteran's active duty at Camp Lejeune from October 1953 to July 1956.

For the reasons that follow and resolving all reasonable doubt in favor of the Veteran, the Board finds that service connection is warranted.

Service connection may be granted for a disability resulting from disease or injury incurred in or aggravated during active service. 38 U.S.C. § 1110; 38 C.F.R. § 3.303(a). Generally, to establish service connection, there must be competent, credible evidence of 1) a current disability, 2) in-service incurrence or aggravation of an injury or disease, and 3) a nexus, or link, between the current disability and the in-service disease or injury. *See Davidson v. Shinseki*, 581 F.3d 1313 (Fed. Cir. 2009).

Where there is a chronic disease shown as such in service or within the presumptive period under 38 C.F.R. § 3.307, so as to permit a finding of service

connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service-connected, unless clearly attributable to intercurrent causes. If there is no showing of a resulting chronic condition during service, then a showing of continuity of symptomatology after service is required to support a finding of chronicity. 38 C.F.R. § 3.303 (b).

Service connection may be established for chronic diseases, to include colon cancer (as malignant tumors), manifesting to a certain degree within a year after service. 38 U.S.C. §§ 1112, 1113, 1137; 38 C.F.R. §§ 3.303, 3.304, 3.307, 3.309(a).

In addition, veterans who had service at Camp Lejeune between August 1953 and December 1987 for at least 30 days are presumed to have been exposed to contaminants in the water supply at the base, meaning volatile organic compounds trichloroethylene (TCE), perchloroethylene (PCE), benzene, and vinyl chloride. For such veterans, the diseases of kidney cancer, liver cancer, non-Hodgkin's lymphoma, adult leukemia, multiple myeloma, Parkinson's disease, aplastic anemia and other myelodysplastic syndromes, and bladder cancer shall be service connected on a presumptive basis even though there is no record of such disease during service, subject to the rebuttable presumption provisions of 38 C.F.R. § 3.307(d); 38 C.F.R. § 3.309(f)(8).

Turning to the evidence of record, there is no dispute that the Veteran has a current disability of colon cancer. Accordingly, the first element of service connection has been established.

The Veteran's service treatment records are silent for any complaints, treatment, or diagnoses related to colon cancer.

Military personnel records confirm that the Veteran served at Camp Lejeune from October 1953 to July 1956; during the period of conceded exposure to CLCW. Thus, the second element of service connection is also established.

Although the Veteran's exposure to CLCW has been conceded, colon cancer is not a disease presumptively associated with such exposure. Nevertheless, the Veteran is not precluded from establishing service connection on a direct basis.

The Veteran was afforded a VA examination for intestinal conditions in September 2017. The examiner confirmed a diagnosis of malignant neoplasm of colon. The examiner did not provide an etiology opinion and simply remarked that colon cancer is not a presumptive condition under CLCW.

In August 2018, a private neuro-radiologist, Dr. C.N.B., submitted a positive etiology opinion linking the Veteran's colon cancer to CLCW. Dr. C.N.B. opined that it was at least 90 percent probable that the Veteran's colon cancer and post-operation residuals were due to his exposure to toxic water during his active duty posting at Camp Lejeune. Dr. C.N.B. explained that the Veteran developed colon cancer because of his exposure to TCE and the water toxins proven to exist at Camp Lejeune while the Veteran was stationed there. Upon review of the Veteran's medical records, chronicity of symptoms, and time lag between injury in-service and current pathology, the neuro-radiologist found the evidence does not support another more plausible etiology for the Veteran's colon cancer. Dr. C.N.B. also noted that another physician has not made an opposing opinion to his, and that his positive etiology opinion is consistent with the Veteran's lay statements, objective findings on tests, and diagnoses.

The Board finds the August 2018 positive etiology opinion by Dr. C.N.B. is probative and competent as to whether a causal nexus exists between the Veteran's colon cancer and his conceded exposure to contaminated water at Camp Lejeune. Importantly, as Dr. C.N.B. wrote, there is no contrasting opinion stating otherwise.

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In light of the foregoing, the Board finds the evidence demonstrates that the Veteran's current colon cancer is due to his in-service CLCW exposure during his active duty. Accordingly, Board finds that service connection for colon cancer is warranted. 38 U.S.C. § 5107; 38 C.F.R. § 3.102.



L. M. BARNARD
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

J. Lee

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.