



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

IN THE

Appellant Represented by

Gordon A. Graham, Agent

[REDACTED]
Docket No. 240805-503649

Advanced on the Docket

DATE: January 30, 2025

ORDER

Service connection for motor neuron amyotrophic lateral sclerosis (ALS) is granted.

Entitlement to special monthly compensation based on aid and attendance is granted.

FINDINGS OF FACT

1. The Veteran died on November 14, 2024, prior to the issuance of the vacated November 22, 2024 Board decision.
2. The Veteran's diagnosed motor neuron disease/monomelic amyotrophy is a form of ALS. The development of ALS at any time following military service is presumed to be related to military service.
3. The Veteran regularly needed the aid and attendance of another person as a result of his ALS.

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CONCLUSIONS OF LAW

1. The criteria for service connection for motor neuron disease/monomelic amyotrophy, as a variant of ALS, are met. 38 U.S.C. §§ 1110, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.318.
2. The criteria for entitlement to special monthly compensation based on the need for aid and attendance have been met. 38 U.S.C. §§ 1110, 5107; 38 C.F.R. §§ 3.350, 3.352(a).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from July 1961 to October 1967, including service in Vietnam. Unfortunately, during the pendency of the appeal, the Veteran passed away in November 2024. The appellant is his surviving spouse.

The rating decision on appeal was issued in July 2024 and constitutes an initial decision; therefore, the modernized review system, also known as the Appeals Modernization Act (AMA), applies.

In the August 5, 2024 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the Veteran elected the Evidence Submission docket.

Therefore, the Board may only consider the evidence of record at the time of the July 2024 agency of original jurisdiction (AOJ) decision on appeal, as well as any evidence submitted by the Veteran with, or within 90 days from receipt of, the VA Form 10182. 38 C.F.R. § 20.303. If evidence was submitted either (1) during the period after the AOJ issued the decision on appeal and prior to the date the Board received the VA Form 10182, or (2) more than 90 days following the date the Board received the VA Form 10182, the Board did not consider it in its decision. 38 C.F.R. §§ 20.300, 20.303, 20.801.

The Board notes that the Veteran filed a claim for service connection in both April and July 2024. However, the rating decision on appeal responded to the April 2024

claim and used the July 2024 claim as evidence in its decision. *See* July 2024 Rating Decision.

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 service, even if the disability was initially diagnosed after service. 38 U.S.C. § 1110; 38 C.F.R. § 3.303. Service connection may also be granted for any disease diagnosed after service, 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 the development of amyotrophic lateral sclerosis manifested at any time after discharge or release from active military, naval, air, or space service, the evidence is sufficient to presumptively establish service connection for that disease, unless there is affirmative evidence it was not incurred during or aggravated by active military, naval, or air service; or there is affirmative evidence that amyotrophic lateral sclerosis is due to the veteran's own willful misconduct; or if the veteran did not have active, continuous service of 90 days or more. 38 C.F.R. § 3.318.

Service connection for motor neuron disease/monomelic amyotrophy, a variant of amyotrophic lateral sclerosis (ALS)

Unfortunately, during the pendency of the appeal, the Veteran passed away in November 2024. The Appellant is the Veteran's surviving spouse.

The appellant contends that the Veteran had a motor neuron disease/monomelic amyotrophy, a variant of ALS, due to the Veteran's active duty service. *See* August 2024 Appellate Brief.

A May 2024 VA Examiner noted that an [electromyography (EMG)] study was conducted in 2017 and the Veteran was diagnosed with "motor neuron disease/monomelic amyotrophy (a variant of ALS) ... as confirmed on his MRI and EMG studies." The Board notes that after the Veteran filed an April 2024 and July 2024 claim for this disability, the AOJ did not request a VA examination and

concluded the Veteran did not have a diagnosis, which is antithesis to the record before the AOJ prior to issuing their July 2024 decision denying his claim.

The Board finds that per the record the Veteran had a diagnosis for his claimed disability, and the remaining inquiry is whether it was service connected. As noted above, when amyotrophic lateral sclerosis manifests at any time after discharge or release from active military, naval, air, or space service, the evidence is sufficient to presumptively establish service connection for that disease. 38 C.F.R. § 3.318. A thorough examination of the record does not reveal any reasons or bases to apply any of the exceptions noted above. As such, the Veteran was entitled to service connection for his diagnosed motor neuron disease/monomelic amyotrophy, a variant of ALS. His appeal is granted.

Entitlement to special monthly compensation based on aid and attendance

The appellant contends that the Veteran was entitled to special monthly compensation based on his need for aid and assistance. In July 2024, the Board remanded this claim to the AOJ for further development. Specifically, the Board requested an opinion from a clinician as to whether it is in the best interest of the Veteran to participate in the [Program of Comprehensive Assistance for Family Caregivers (PCAFC)], underlining the fact that the Board had already made the favorable finding that the Veteran is in need of personal care services for a minimum of six continuous months based on a need for regular or extensive instruction or supervision without which the ability of the Veteran to function in daily life would be seriously impaired. *See* July 2024 Board of Veterans' Appeals Decision. No such opinion was sought, and the AOJ denied the claim.

However, in the July 2024 rating decision on appeal, the AOJ made a favorable finding that the Veteran "has disabilities which lead to a need for regular assistance from others with activities of daily living." The Board is bound by this favorable finding. 38 CFR § 3.104(c). As such, resolving all doubt in the Veteran's favor, the Board finds that the Veteran was entitled to special monthly compensation based on aid and attendance. His appeal is granted.

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S. C. Krembs
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

Jackson, Atossa K.

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.