# BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF [redacted]

Docket No. 231226-403188

Appellant Represented by
Gordon A. Graham, Agent

DATE: March 4, 2025

## ORDER

Entitlement to service connection for osteoarthritis as secondary to service-connected hepatitis C is granted.

Entitlement to service connection for rheumatoid arthritis as secondary to service-connected hepatitis C is granted.

Entitlement to service connection for the bilateral upper extremities as secondary to service-connected rheumatoid arthritis is granted.

Entitlement to service connection for an acquired psychiatric disorder as secondary to service-connected hepatitis C is granted.

Entitlement to service connection for squamous cell carcinoma of the anus (cancer) as secondary to service-connected hepatitis C is granted.

Entitlement to service connection for psoriatic arthritis as secondary to service-connected hepatitis C is denied.

## FINDINGS OF FACT

1. The Veteran suffers from osteoarthritis, rheumatoid arthritis, depression, and squamous cell carcinoma of the anus as secondary to service-connected hepatitis C.

2. The Veteran's bilateral upper extremity pain is due to his rheumatoid arthritis.

3. There is no confirmed diagnosis of psoriatic arthritis.

## CONCLUSIONS OF LAW

1. The criteria for service connection for osteoarthritis as secondary to service-connected hepatitis C are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.310.

2. The criteria for service connection for rheumatoid arthritis as secondary to service-connected hepatitis C are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.310.

3. The criteria for service connection for bilateral upper extremities as secondary to service-connected rheumatoid arthritis are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.310.

4. The criteria for service connection for an acquired psychiatric disorder as secondary to service-connected hepatitis C are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.310.

5. The criteria for service connection for squamous cell carcinoma of the anus as secondary to service-connected hepatitis C are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.310.

6. The criteria for service connection for psoriatic arthritis as secondary to service-connected hepatitis C are not met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.310.

## REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from June 1971 to May 1974. Unfortunately, the Veteran passed away in March 2022. The Veteran's surviving spouse has been properly substituted as the appellant.

This matter comes before the Board of Veterans' Appeals (Board) from a November 2023 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO).

In the December 2023 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the Veteran elected the Direct Review docket.

Therefore, the Board may only consider the evidence of record at the time of the November 2023 agency of original jurisdiction (AOJ) decision on appeal. 38 C.F.R. § 20.301. Any evidence submitted after the AOJ decision on appeal cannot be considered by the Board. 38 C.F.R. §§ 20.300, 20.301, 20.801.

If the Veteran would like VA to consider any evidence that was submitted that the Board could not consider, the Veteran may file a Supplemental Claim (VA Form 20-0995) and submit or identify this evidence. 38 C.F.R. § 3.2501. If the evidence is new and relevant, VA will issue another decision on the claims, considering the new evidence in addition to the evidence previously considered. *Id.* Specific instructions for filing a Supplemental Claim are included with this decision.

**1. Entitlement to service connection for osteoarthritis as secondary to service-connected hepatitis C**

**2. Entitlement to service connection for rheumatoid arthritis as secondary to service-connected hepatitis C**

Prior to the Veteran's death, the Veteran claimed that he suffered from osteoarthritis and rheumatoid arthritis as a result of his hepatitis C.

Generally, to establish service connection, a claimant must show: (1) a present disability; (2) an in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service, the so-called "nexus" requirement. *See* 38 U.S.C. §§ 1110, 1131; 38 C.F.R. § 3.303; *see also Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004). A disability that is proximately due to, the result of, or aggravated by a service-connected disease or injury shall be service connected. 38 C.F.R. § 3.310.

Service treatment records are silent for any complaints, treatment, or diagnosis of arthritis in service.

The Veteran has been diagnosed with osteoarthritis and rheumatoid arthritis.

The Veteran's treating physician opined the Veteran's arthralgias are secondary to his hepatitis C as he reported having symptoms for many years. *See* Medical Treatment Record - Government Facility, December 2011. The Board credits this opinion.

In an October 2022 VA examination, a VA examiner concluded that there was no causal relationship between arthritis and hepatitis C. *See* C&P Exam, October 2022. A second October 2023 examiner again opined that these conditions did not have a causal relationship to hepatitis C. However, the examiner did concede that there is some research to suggest an association between hepatitis C and rheumatoid arthritis.

Resolving the benefit of the doubt in favor of the Veteran, the Board finds that the Veteran's osteoarthritis and rheumatoid arthritis are secondary to his hepatitis C. Initially, the Board does not find the VA examinations probative as they only opined on a direct causal relationship and did not determine if the Veteran's hepatitis C aggravated his arthritis. Regardless, the October 2023 VA examiner did document that there is an association between rheumatoid arthritis and hepatitis C, demonstrating that his hepatitis C could have been a contributing cause to his rheumatoid arthritis. Finally, the Veteran's treating physician stated that his arthralgias were likely secondary to his hepatitis C due to his length of symptoms. As the reasonable doubt created by this relative equipoise in the evidence must be resolved in favor of the Veteran, entitlement to service connection for osteoarthritis and rheumatoid arthritis is warranted. 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102. *See also Buchanan*, 451 F.3d at 1335 ("[N]othing in the regulatory or statutory provisions [relating to evidence to be considered] require both medical and competent lay evidence; rather, they make clear that competent lay evidence can be sufficient in and of itself.")

**3. Entitlement to service connection for the bilateral upper extremities as secondary to service-connected rheumatoid arthritis**

While the Veteran initially claimed that his hepatitis C was the cause of his bilateral upper extremity pain, the Board finds that his upper extremity pain is due to his now service-connected rheumatoid arthritis.

October 2022 and October 2023 VA examinations determined that there was no causal relationship between hepatitis C and the Veteran's bilateral upper extremity pain. The examiner concluded that the Veteran's upper extremity pain is caused by his rheumatoid arthritis. *See* C&P Exam, October 2023.

As the Veteran's rheumatoid arthritis is now service-connected, service connection for bilateral upper extremity pain is warranted on a secondary basis due to his arthritis.

**4. Entitlement to service connection for an acquired psychiatric disorder as secondary to service-connected hepatitis C**

Prior to the Veteran's death, the Veteran claimed that he suffered from an acquired psychiatric disorder as a result of his hepatitis C.

Initially, the Board notes that the Veteran's service treatment records document trouble with nerves, such as shaking hands, and frequent trouble sleeping in February 1974. *See* STR-Medical, May 1981.

A private medical opinion from 2011 attributed the Veteran's depression to his medical condition, including hepatitis C. The psychiatrist concluded the Veteran's symptoms affected his everyday life significantly because of the near-constant pain. The psychiatrist wrote, "The depressed mood and anxiety related to his medical condition are extremely debilitating and are affect hi[m] every moment of every day." *See* Medical Treatment Record - Government Facility, December 2011.

A VA examiner provided a negative opinion, however the examiner only stated that there was not enough evidence to show that the Veteran's depressive symptoms were due to hepatitis C alone without speculation as the private examiner attributed his depression to other medical conditions as well. *See* C&P Exam, November 2022. The Board finds the examiner's opinion inadequate as conclusory and unexplained.

Resolving the benefit of the doubt in favor of the Veteran, the Board finds that the Veteran's depression is secondary to his hepatitis C. The Board notes that the VA examiner relied on the incorrect premise. The Veteran's depression does not need to solely be caused by his hepatitis C, only that his hepatitis C is a contributing cause of his depression. Further, the private examiner attributed the Veteran's depression to his general medical condition, which included his hepatitis C. As the reasonable doubt created by this relative equipoise in the evidence must be resolved in favor of the Veteran, entitlement to service connection for an acquired psychiatric disorder is warranted. 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102. *See also Buchanan*, 451 F.3d at 1335 ("[N]othing in the regulatory or statutory

provisions [relating to evidence to be considered] require both medical and competent lay evidence; rather, they make clear that competent lay evidence can be sufficient in and of itself.")

**5. Entitlement to service connection for cancer as secondary to service-connected hepatitis C**

Prior to the Veteran's death, the Veteran claimed that he suffered from cancer as a result of his hepatitis C.

Service treatment records are silent for any complaints, treatment, or diagnosis of cancer.

The Veteran had been diagnosed with squamous cell carcinoma of the anus.

A VA opinion from October 2022 opined that it was less likely than not that the Veteran's cancer was due to his hepatitis C as there was no causal relationship between the conditions. A second VA examiner from October 2023 stated that there is no credible medical evidence to support a causal link between the conditions.

However, a private opinion was submitted in April 2023 that opined that it was at least as likely as not that the Veteran's cancer was caused by his hepatitis C. The examiner cited to medical literature to determine that the hepatitis C infection is associated with the development of many cancers, including anal cancer. Specifically, the examiner stated that persistent hepatitis C infections lead to liver fibrosis and cirrhosis, which increases the risk for cancer. The Veteran is additionally service connected for cirrhosis. *See* Medical Treatment Record – Non-Government Facility, April 2023.

Resolving the benefit of the doubt in favor of the Veteran, service connection is warranted. Initially, the VA examiners failed to opine if the Veteran's cancer was aggravated by his hepatitis C. Further, the October 2023 VA examiner stated there was no credible medical evidence to support a link between the conditions, however the private examiner cited to numerous medical articles demonstrating a

relationship. Finally, the private examiner also attributed the Veteran's cancer to cirrhosis, which the Veteran is service connected for. As the reasonable doubt created by this relative equipoise in the evidence must be resolved in favor of the Veteran, entitlement to service connection for squamous cell carcinoma of the anus is warranted. 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102. *See also Buchanan*, 451 F.3d at 1335 ("[N]othing in the regulatory or statutory provisions [relating to evidence to be considered] require both medical and competent lay evidence; rather, they make clear that competent lay evidence can be sufficient in and of itself.")

**6. Entitlement to service connection for psoriatic arthritis as secondary to service-connected hepatitis C**

Prior to the Veteran's death, the Veteran claimed that he suffered from psoriatic arthritis as a result of his hepatitis C.

The question for the Board is whether the Veteran has a current disability that began during service or is at least as likely as not related to an in-service injury, event, or disease.

The Board concludes that the Veteran does not have a current diagnosis of psoriatic arthritis and has not had one at any time during the pendency of the claim or recent to the filing of the claim. *Romanowsky v. Shinseki*, 26 Vet. App. 289, 294 (2013); *McClain v. Nicholson*, 21 Vet. App. 319, 321 (2007).

The October 2022 and October 2023 VA examiners determined that the Veteran did not have a diagnosis of psoriatic arthritis. Treatment records fail to document a diagnosis of psoriatic arthritis. *See* C&P Exams, October 2022, October 2023.

While the Veteran believed that he was diagnosed with psoriatic arthritis, the Veteran was not competent to provide a diagnosis in this case. The issue is medically complex, as it requires the ability to interpret diagnostic medical testing. *Jandreau v. Nicholson*, 492 F.3d 1372, 1377, 1377 n.4 (Fed. Cir. 2007). Consequently, the Board gives more probative weight to the competent medical evidence.

As the Veteran has not been diagnosed with psoriatic arthritis, service connection is not warranted.

Frederic P. Gallun
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board — M.H., Counsel

*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.*