



STATEMENT IN SUPPORT OF CLAIM

PRIVACY ACT INFORMATION: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional oversight, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA Programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58 VA31/23, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Creating a new SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determining individual benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim (or benefits) (38 U.S.C. 591(a) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.omb.eop.gov/omb/privacy/COMBINTV.html. If desired, you can call 1-800-827-1000 to get information on when to send comments or suggestions about this form.

FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN (Type or print)

SOCIAL SECURITY NO.

VA FILE NO.

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

Reference to Bates Numbers are references to the Bates-marked copy of the Veteran's C-File received in the offices of the Attig Law Firm on April 23, 2013. The entire file is marked Bates 13.113-000001- through 13.113-000286- . Thus, any information noted herein with a citation reference to Bates 13.113-000XXX- is information that is already in the C-File as of February 13, 2013. (The C-File was dated February 13, 2013, but was not produced by VA until April 23, 2013, after a civil suit was filed in U.S. District Court, N.D. Texas, due to VA's failure to timely respond to the FOIA request for a copy of the C-File).

The Veteran's surviving spouse has retained Attorney Chris Attig, (accredited since September 17, 2008), and as such specifically requests that the Decision Review Officer (DRO) make direct contact with Mr. Attig to schedule a telephonic or video DRO meeting with Mr. Attig, the Veteran's attorney, in order to discuss the underlying decision of the VA Regional Office.

This is a Notice of Disagreement (NOD) to a VA Rating Decision ; the VA Notice of Action Letter delivering that Notice of Disagreement is dated May 14, 2012.

The Veteran incorporates, by reference herein, all facts, evidence and argument submitted to the VA between May 14, 2012, and the present date.

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ADDRESS

TELEPHONE NUMBER (Include Area Code)

PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

VA FORM
AUG 2001

21-4138

EXISTING STOCKS OF VA FORM 21-4138,
JUN 2000, WILL BE USED

CONTINUE ON REVERSE

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

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The Veteran disagrees with all the adjudicative determinations mentioned in the above-referenced letter and Rating Decision, and any enclosures thereto, and hereby expresses an intent to appeal; this NOD specifically covers all the determinations made by the Regional Office unless specifically excluded. The Veteran also disagrees with the RO's failure to adjudicate issues and claims it was required to adjudicate. The Veteran is specifically referring to issues that the Veteran may not have discussed but which were reasonably raised by the evidence in the VA Claims file or in the VA's possession that should have been inferred by the regional office.

This appeal also includes adjudicative determinations that were mis-characterized by the regional office. This NOD expresses the Veteran disagreement with the adjudicative determinations of the RO and the Veteran's intent to appeal and contest the result and seek appellate review of the same. This NOD expresses the Veteran's desire for a de novo review by a Decision Review Officer, without deference to the prior decisions of the VA, and including informal conferences with the Veteran and the Veteran's representative, requisite C&P exams and/or other medical evaluations, and a personal hearing with the DRO, the Veteran and the Veteran's representative. If this DRO appeal is not resolved favorably, through the DRO process, please send the Veteran and the Veteran's attorney a copy of any Statement of Case (SOC), Supplemental Statement of the Case (SSOC) or other documentation related to this claim.

In addition to the above, the Veteran wishes to point out the following:

MILITARY SERVICE

██████████ (DOB: ██████████) served in the Army from ██████████ 1971, to ██████████ 1974. Bates 13-113.000141-██████████ His DD-214 reflects that he served in Thailand during the Vietnam War. Bates 13-113.000141-██████████

A further look at the Veteran's Enlisted Record Brief, shows that he served with the H&S 7th RRFS USARPAC. This unit's full name is the 7th Radio Research Field Station, US Army Pacific, Headquarters and Service Company. H&S Company, in which the Veteran served, is known to have been located at 2 bases in Thailand: Ramuson and Udorn.

The Veteran clearly served at both bases. He served for one year in "FEPA-Thailand": from November 22, 1971, to November 21, 1972. Bates 13-113.000145-██████████. His Enlistment Record brief shows that he arrived in-country in Thailand on/about November ██████████ 1971. Bates 13-113.000114-██████████ It then reflects a change of duty location on September ██████████ 1972. Bates 13-113.000114-██████████ It then reflects that the Veteran went to casual duty status for travel back to CONUS on November ██████████ 1972. Bates 13-113.000114-██████████ In summary, the Veteran appears to have been assigned to both locations where the 7th RRFS, H&S Company was stationed: Ramuson and Udorn Air Base - both in Thailand.

The specific bases can be narrowed down further. On 14 Nov 1972, the Veteran had his blood drawn at the "7th RRFS Dispensary, APO SF 96386". 13-113.000029-██████████ APO SF 96386 is known to be the APO address for Ramuson. Thus, it can be deduced that the Veteran served at Udorn from November ██████████ 1971 - September ██████████ 1972, and at Ramuson from September ██████████ 1972, until November ██████████ 1972.

[The Service medical record that Appears at Bates 29 shows an entry for January 1972, which has been crossed out and altered after the fact; presumably there is an earlier page in the record which has not been provided, which might further reflect what base the Veteran sought medical treatment at in January 1972: it may even reflect treatment in the Republic of Vietnam].

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Further, it is known that the 7th RRFS was divided into multiple locations, each with its own defoliated perimeter base. The Veteran would have had to cross over these various perimeters when moving between the work facilities and the living quarters, and would have been exposed to defoliant used on the perimeter of either/both the Udorn and Ramuson bases.

[N.B. The JSRRC does not maintain unit records for the 7th RRFS due to the nature of the work performed on that base. To verify this information, you must contact the Commander, US Army Intelligence Security Command, ask for a detailed response showing the dates that the 7th RRFS was assigned to Udorn and to Ramuson.]

II. VETERAN'S PRE-DEATH MEDICAL CONDITION.

Veteran was diagnosed with a coronary artery disease on/about January 3, 2002, when a cardiac catheter determined a blockage in one vessel. 13-113.000190 [REDACTED]

Further, the Veteran was diagnosed with Diabetes Mellitus in approximately 1994. 13-113.000220 [REDACTED] (Reflecting that 48 year old Veteran had 5 year history of Type 2 Diabetes; if the Veteran's diabetes started at age 43, the year of diagnosis is 1994).

Veteran's medical treatment records reflect that he was in Thailand and Vietnam during the Vietnam War. Bates 13-113.000192 [REDACTED] Indeed, the Veteran is believed to have travelled from Thailand to Vietnam as part of his duties, and while on leave during his tour of duty in Thailand. Furthermore, the spouse averred that she believed he entered Vietnam while stationed in Thailand. Bates 13-113.000269 [REDACTED]

The Veteran died on November 27, 2002. Bates 13-113.000148 [REDACTED] According to the official death certificate, the immediate cause of death was cardiopulmonary arrest, and the following conditions contributed to his death: hyperlipidemia, Diabetes Mellitus, and Sleep Apnea. Bates 13-113.000148 [REDACTED]

III. SURVIVOR BENEFIT CLAIMS

[REDACTED] surviving spouse of Veteran [REDACTED] filed her claim for DIC and Accrued Benefits on/about April 7, 2003. Bates 13-113.000266 [REDACTED]

By a ratings decision dated June 26, 2003, issued by Notice of Action Letter dated July 2, 2003, VA denied service-connection for cause of death (DIC) on the grounds that "during his lifetime he did not establish service connection for any disability". Bates 13.113-000109 [REDACTED] VA added that while the Veteran was diagnosed with Diabetes Mellitus, there "...is no evidence that your spouse was in Vietnam". Bates 13.113-000109 [REDACTED]

In its June 26, 2003, Ratings Decision, denying DIC, VA did not address Mrs. [REDACTED] claim for accrued benefits. Bates 13-113.000163 [REDACTED] to Bates 13-113.000165 [REDACTED]

Mrs. [REDACTED] filed a claim to reopen consideration of her DIC and Accrued Benefits claims in September 2011. VA denied to reopen, on the grounds that there was no new and material evidence on which to reopen the claim.

To the contrary, the VA has recently issued new guidance for its adjudicators in assessing claims for presumptive service connection of diseases associated with Agent Orange when such claims are made by Veterans who served in Thailand during the Vietnam War or their survivors.

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The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

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Additionally, Mrs. [REDACTED] plans to add additional evidence that establishes that her husband performed duty, in the military, along and outside the perimeter at 2 bases in Thailand: specifically, guard duty along and outside the perimeter, questioning individuals as they entered the base through the perimeter, etc., et al.

IV. ARGUMENTS.

A. The law does not require that a Veteran establish service-connection prior to death for his surviving spouse to be eligible for DIC and Accrued Benefits.

By a ratings decision dated June 26, 2003, issued by Notice of Action Letter dated July 2, 2003, VA denied service-connection for cause of death (DIC) on the grounds that "during his lifetime he did not establish service connection for any disability". Bates 13.113-000109 [REDACTED]

This is an incorrect statement of the law. A Veteran's surviving spouse can show entitlement for DIC even if the Veteran never filed an application for VA Benefits during his lifetime.

Federal Regulations clearly state that VA is required to decide a claim for death benefits without regard to VA's decision on those issues during the Veteran's lifetime. 38 C.F.R. § 20.1106.

B. REOPEN CLAIM FOR DIC.

In its Ratings decision delivered May 14, 2012, VA denied the existence of new and material evidence to reopen the surviving spouse's claim for DIC. Bates 13-113.000004 [REDACTED]

VA failed to consider that between the date of the last denial (July 2, 2003) and the request to reopen (September 15, 2011), the VA has issued new regulations and guidance regarding how claims of exposure to Agent Orange (and the consequent presumptive service connection question) will be handled when raised by Vietnam Veterans that were stationed in Thailand during the Vietnam War.

In a May 2010, Compensation and Pension Bulletin, VA acknowledged new procedures and rules for Agent Orange related claims growing out of Thailand service during the Vietnam War. When claims indicating "Thailand service are received, RO personnel should now evaluate the treatment and personnel records to determine whether the Veteran's service activities involved duty on or near the perimeter of the military base where the Veteran was stationed." VA Comp & Pen Bulletin (May 2010).

Second, VA has implemented specific procedures for developing claims regarding exposure to herbicides for veterans who served in Thailand during the Vietnam Era. See VA Adjudication Procedure Manual and Manual Rewrite (M21-MR) Part IV, Subpart ii, ch. 2, sec. C, para. 10 (q).

These 2 changes provide the new and material evidence to reopen the Surviving Spouse's claim for DIC and/or Accrued Benefits.

C. Grant DIC.

Mrs. [REDACTED] has shown all necessary facts to support a grant of service-connection of the Veteran's cause of death and payment of Dependency and Indemnity Compensation (Effective Date: November 27, 2002).

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The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

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To wit, she has shown:

1. The Veteran was diagnosed with Diabetes Type 2 (January 1, 1994)
2. The Veteran was diagnosed with Coronary Artery Disease (January 3, 2002)
3. This Army Veteran served on an air base in Thailand (Udon), and was exposed to Agent Orange while performing guard duty on and outside the perimeter of Udon Airbase (Thailand) and on/outside the perimeter at Ramuson Base (Thailand) during the Vietnam War.
4. The Veteran's conditions are presumed caused by exposure to Agent Orange
5. The Veteran's death was caused by his heart condition and Type 2 Diabetes.

Based on all of the above, Mrs. [REDACTED] is entitled to a grant of service-connection of cause of death, and payment of DIC.

Because Mrs. [REDACTED] timely filed a claim for DIC within one (1) year of the Veteran's death, the effective date for past-due benefits, in a reopened claim of this nature, is the date of the Veteran's death - November 27, 2002.

V. RELIEF REQUESTED

Reopen Mrs. [REDACTED] claim for service-connection of the cause of death based on liberalizing changes in the law affecting certain veterans of the Vietnam War who were exposed to Agent Orange while stationed in Thailand

Grant service connection of the Veteran's cause-of-death (i.e., heart condition and Type 2 Diabetes)

Establish an effective date of November 27, 2002, and pay past-due benefits in that amount to the Veteran.

---END OF DOCUMENT---