



**21/APPEALS TEJM**  
**DEPARTMENT OF VETERANS AFFAIRS**  
Wichita Regional Office  
PO Box 21318  
Wichita KS 67208

AUG 31 2010

In Reply Refer To:  
45212111Appeals

558

Dear Mr. :

You have filed a Notice of Disagreement with our action. This is the first step in appealing to the Board of Veterans' Appeals (BVA). This letter and enclosures contain very important information concerning your appeal.

**Statement of the Case**

We have enclosed a Statement of the Case, a summary of the law and evidence concerning your claim. This summary will help you to make the best argument to the BVA on why you think our decision should be changed.

**What You Need To Do**

To complete your appeal, you must file a formal appeal. We have enclosed VA Form 9, Appeal to the Board of Veterans' Appeals, which you may use to complete your appeal. We will gladly explain the form if you have questions. Your appeal should address:

- the benefit you want
- the facts in the Statement of the Case with which you disagree; and
- the errors that you believe we made in applying the law.

**When You Need To Do It**

You must file your appeal with this office within 60 days from the date of this letter or within the remainder, if any, of the one-year period from the date of the letter notifying you of the action that you have appealed. **If we do not hear from you within this period, we will close your case.** If you need more time to file your appeal, you should request more time before the time limit for filing your appeal expires. See item 5 of the instructions in VA Form 9, Appeal to Board of Veterans' Appeals.

## Hearings

You may have a hearing before we send your case to the BV A. If you tell us that you want a hearing, we will arrange a time and a place for the hearing. V A will provide the hearing room, the hearing official, and a transcript of the hearing for the record. VA cannot pay any other expenses of the hearing. You may **also** have a hearing before the BV A, as noted on the enclosed VA Form 9, Appeal to the Board of Veterans' Appeals. **Do not delay filing your appeal if you request a hearing. Your request for a hearing does not extend the time to file your appeal.**

## Representation

If you do not have a representative, it is not too late to choose one. An accredited representative of a recognized service organization may represent you in your claim for V A benefits without charge. An accredited attorney or an accredited agent may also represent you before V A, and may charge you a fee for services performed after the filing of a notice of disagreement. In certain cases, V A will pay your accredited agent or attorney directly from your past due benefits. For more information on the accreditation process and fee agreements (including filing requirements), you and/or your representative should review 38 U.S.C. § 5904 and 38 C.F.R. § 14.636 and VA's website at <http://www.va.gov/ogc/accreditation.asp>. You can also find the names of accredited attorneys, agents and service organization representatives on this website.

## What We Will Do

After we receive your appeal, we will send your case to the BVA in Washington, DC for a decision. The BV A will base its decision on an independent review of the entire record, including the transcript of the hearing, if you have a hearing.

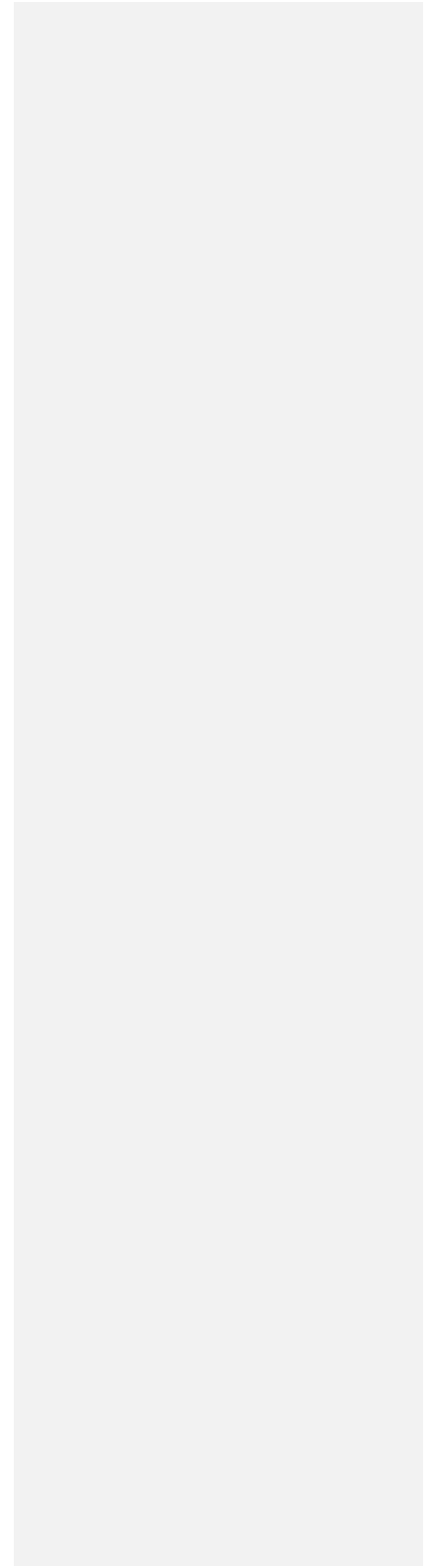
Sincerely yours,

Douglas C. Chapman

Douglas C. Chapman  
Veterans Service Center Manager

Enclosure(s): VA Form 9

CC: VETERANS OF FOREIGN WARS OF THE US



<b>Statement of the Case</b>		<i>Department of Veterans Affairs</i> <i>Wichita Regional Office</i>		Page 1 08/31/2010
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**INTRODUCTION:**

We received your initial claim on August 31, 2010. Your claim was decided on December 22, 2009 . You were furnished a copy of the decision and provided your appellate rights on December 24,2009. Your Notice of Disagreement (NOD) was received on January 11,2010, with your election of the Decision Review Officer (DRO) process. As a result of your election, this decision is based on de novo review of the evidentiary record.

You have been advised of the information and evidence necessary to substantiate your claim. All reasonable efforts have been made to assist you in the development of your claim. You have not indicated any other evidence which may be obtainable. Therefore, the notice requirements of the Veterans Claims Assistance Act (VCAA) have been met and VA's duty to assist you in the development of your claim has been fulfilled.

**ISSUE:**

1. Service connection for diabetes mellitus, type II.  
Other issues are sanitized.

**EVIDENCE:**

- Rating decision dated August 11, 2009 and all evidence discussed therein.
- VA Form 21-4138, Statement in Support of Claim, received August 31, 2009.
- VA Form 21-4138, Statement in Support of Claim, including a statement from a James King and a photograph, received September 16,2009.
- Department of Veterans Affairs Fast Letter 09-20, dated May 6, 2009.
- Memorandum for the Record: Herbicide use in Thailand during the Vietnam Era, dated May 6,2009.
- Response from the National Personnel records Center regarding your herbicide exposure, received March 14,2009.
- Congressional inquiry received January 20,2009
- Letter from Dr. Richard E. Lockamy dated February 11,2010 and received February 12,2010
- Geary Community Hospital operative report dated August 16, 1996
- Copies of Department of the Air Force CHECO report and the e-mails used to request the report through the Freedom of Information Act.
- Letter from you received July 20, 2010.

**Comment [BJ1]:** Does not show evidence presented at DRO Hearing on February 10, 2010 nor Copies of Airman Proficiency Reports Placing me on the flight line which was according to p 73, USAF CHECO Report- Base Defense, Thailand is in the perimeter. See Bruce Document attached. **This is a Clear and Unmistakable Error on the VARO!**

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ADJUDICATIVE ACTIONS:

08-31-2009 Claim received.

12-22-2009 Claim considered based on all the evidence of record.

12-24-2009 You were notified of the decision.

01-11-2010 Notice of Disagreement and De Novo Review election received from you.

08-30-2010 De Novo Review performed based on all the evidence of record.

02-10-2010 Personal hearing to provide testimony conducted February 10,2010

PERTINENT LAWS: REGULATIONS: RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol "\$" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits.

38 USC See 5107 (03/02) Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY- Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

(b) BENEFIT OF THE DOUBT- The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

§ 19.32 Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated. (Authority: 38 U.S.C. 7105(d)(3))

2.

Extraskelatal Ewing's sarcoma  
 Congenital and infantile fibrosarcoma  
 Malignant ganglioneuroma

Note 2: For purposes of this section, the term acute and subacute peripheral neuropathy means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.

**DECISION:**

1. The claim for service connection for diabetes mellitus, type II remains denied. Other issues are sanitized.

**REASONS FOR DECISION:**

1. Service connection for diabetes mellitus, type II.

To establish service connection for a current disability, there must be (1) evidence of a current disability, (2) evidence of disease or injury in service, and (3) evidence linking the current disability to service. Further, the evidence must be competent. The presence of a current disability requires a medical diagnosis; and, where an opinion is used to link the current disability to service, a competent opinion of a medical professional is required. Service connection may be presumed for diabetes if manifested any time following discharge due to herbicide exposure in Vietnam.

**Comment [BJ2]:** We are dealing with herbicide exposure in Thailand not Vietnam.

In order to grant service connection for type II diabetes mellitus on a presumptive basis for herbicide exposure two criteria must be met. Service in Vietnam, and a current valid medical diagnosis for type II diabetes mellitus.

**Comment [BJ3]:** My claim is for direct exposure to herbicides.

You have admitted that you did not service in the Republic of Vietnam, but in fact you indicated that you served in Thailand and you claim that you were exposed to Agent Orange that was sprayed around the airport to keep vegetation down.

Your contention at your personal hearing is that you were sprayed with herbicides that were sprayed close to the perimeter of the base to keep the foliage down. Another contention is that the aircraft were sprayed with Agent Orange and you worked on the aircraft and touched the Agent Orange.

Herbicide related claims from Veterans with Thailand service

After reviewing documents related to herbicide use in Vietnam and Thailand, C&P Service has determined that there was significant use of herbicides on the fenced in perimeters of military bases in Thailand intended to eliminate vegetation and ground cover for base security purposes. Evidence of this can be found in a declassified Vietnam era Department of Defense (DoD) document titled *Project CHECO Southeast Asia Report: Base Defense in Thailand*. Therefore, when herbicide related claims from Veterans with 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.

DoD has provided information that commercial herbicides, rather than tactical herbicides, were used within the confines of Thailand bases to control weeds. These commercial herbicides have been, and continue to be, used on all military bases worldwide. They do not fall under the V A regulations governing exposure to tactical herbicides such as Agent Orange. However, there is some evidence that the herbicides used on the Thailand base perimeters may have been either tactical, procured from Vietnam, or a commercial variant of much greater strength and with characteristics of tactical herbicides. Therefore, C&P Service has determined that a special consideration of herbicide exposure on a facts found or direct basis should be extended to those Veterans whose duties placed them on or near the perimeters of Thailand military bases. This allows for presumptive service connection of the diseases associated with herbicide exposure. The majority of troops in Thailand during the Vietnam era were stationed at the Royal Thai Air Force Bases of U- Tapao, Ubon, Nakhon Phanom, Udon, Takhli, Korat, and Don Muang. If a US Air Force Veteran served on one of these air bases as a security policeman, security patrol dog handler, member of a security police squadron, or otherwise served near the air base perimeter, as shown by MOS (military occupational specialty), performance evaluations, or other credible evidence, then herbicide exposure should be acknowledged on a facts found or direct basis. However, this applies only during the Vietnam era, from February 28, 1961 to May 7, 1975.

Along with air bases, there were some small Army installations established in Thailand during this period, which may also have used perimeter herbicides in the same manner as the air bases. Therefore, if a US Army Veteran claims a disability based on herbicide exposure and the Veteran was a member of a military police (MP) unit or was assigned an MP MOS and states that his duty placed him at or near the base perimeter, then herbicide exposure on a facts found or direct basis should be acknowledged for this Veteran. The difference in approach for US Army Veterans is based on the fact that some MPs had criminal investigation duties rather than base security duties.

**Comment [BJ4]:** This reports identifies, p 73, physical security issues at Udon as aircraft on flight line are in the perimeter making it difficult to provide for 3 Ring defense. I stated this at my DRO Hearing in February.

**Comment [BJ5]:** See USAF CHEC Report- Base Defense Thailand, page 73

**Comment [BJ6]:** See US Army FM- 3-3, Tactical Use of Herbicides submitted at my DRO Hearing in February.

**Comment [BJ7]:** I was not given special consideration.

**Comment [BJ8]:** I was stationed at this base, Aug 1970-July 1971

**Comment [BJ9]:** Evaluation Reports provided in May 2010 to substantiate this.

- 5.
- 6.

**Statement of the Case**

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Wichita Regional Office

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A veteran's lay statement is required to establish security duty on the base perimeter. It is the policy of the Department of Veterans Affairs to grant service connection to US Army personnel who served on air bases in Thailand. During the early years of the Vietnam War, before Air Force security units were fully established on air bases in Thailand, US Army personnel may have provided perimeter security. In such cases, if the veteran provides a lay statement that he was involved with perimeter security duty and there is substantial credible evidence supporting this statement, then herbicide exposure on a facts found basis can be acknowledged for this Veteran.

You have provided an opinion from your treating physician who has indicated that it is more likely than not that your diabetes mellitus condition was due to your exposure to Agent Orange while you were on active duty. The opinion was based on your history of the facts that cannot be verified by the available evidence of record.

Documented evidence indicates that you did not begin providing security to Air Force bases until after your service in Thailand. It has been identified that your military occupational specialty while you were in Thailand was that of Avionic navigation and radar technician. Internal mechanical repairs were completed in hangers to keep internal avionic equipment as dust free and dry as possible and to keep the repairmen out of the sun and rain. The extreme heat in the summer and the unexpected rain made most repairs to aircraft be accomplished in the safety of the hanger where the parts and tools were located. There is no evidence to show that you worked on aircraft close to the perimeter of the base and that you could have been contaminated by Agent Orange chemicals that may have been used by the Air Force to control weeds.

Aircraft hangers are not located close to the perimeter of the airport for the safety and sabotage considerations of aircraft. Aircraft were never routinely sprayed with herbicides and great care was used to keep aircraft from the corrosive properties of any defoliant used to control weeds. There has been no evidence provided other than mere speculation of your possible exposure to Agent Orange chemicals during your service in the Air Force while you served in Thailand.

Service connection for diabetes mellitus type II remains denied because the available medical evidence fails to show you served in country in Vietnam. Nor is there evidence of exposure to tactical herbicides in any other period of service to include your service in Thailand.

**Comment [BJ10]:** No family history of diabetes mellitus.

**Comment [BJ11]:** This is true, however we did our diagnostic testing/troubleshooting on the flight line where the aircraft was located in the revetments. If there was maintenance to be done, we removed the appropriate 'black box(es)' and transported them to the shop to have them bench tested.

**Comment [BJ12]:** We did work in the sun and sometimes rain when a portable canopy cover was rolled to cover both front and rear cockpit seats.

**Comment [BJ13]:** This is not true! The RF-4C and F4-D aircraft I worked on were on the flight line not in Hangars as stated! F-4/RF-4 Aircraft were located in revetments near the perimeter as stated in CHECO Report- Base Defense, Thailand, p 73. Pictures were previously submitted showing revetments where aircraft were located. This truly meets the criteria of a CUE on the VARO.

**Comment [BJ14]:** This not true! I worked on Flight line, saw yellow tugs pulling 55 gallon drums spraying in the middle of the day. Also confirmed by Buddy Statement from James King who was in same unit as I at Udorn. Also, the F-4/RF-4 Phantoms were located in revetments near the perimeter as stated in CHECO Report- Base Defense Thailand, p. 73

**Comment [BJ15]:** May 2010 C&P Bulletin establishes procedures for herbicide exposure in Thailand, as well as it's predecessor- VA FAST 09-20.

**Comment [BJ16]:** VA concedes herbicides, either tactical or strong commercial grade, were used at Udorn as well as other RTAFB's in Thailand.

