THE ISSUE: Entitlement to service connection for sleep apnea as secondary to service-connected post-traumatic stress disorder (PTSD).

REPRESENTATION - Appellant represented by: Disabled American Veterans

ATTORNEY FOR THE BOARD - Richard A. Cohn, Associate Counsel

INTRODUCTION - The veteran served on active duty from April 1970 to December 1971.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from an August 1999 rating decision of the Department of Veterans Affairs (VA) Regional Office in St. Louis, Missouri (RO) which denied service connection for sleep apnea as secondary to service-connected PTSD.

FINDINGS OF FACT

1. The record includes all evidence necessary for the equitable disposition of this appeal.

2. There is competent medical evidence linking current sleep apnea to the veteran's service-connected PTSD.

CONCLUSION OF LAW


REASONS AND BASES FOR FINDINGS AND CONCLUSION

The veteran attributes sleep apnea to his service-connected PTSD. The veteran does not contend that he incurred or aggravated sleep apnea during service and there is no evidence of sleep apnea or other sleep disorder in the veteran's service medical records SMRs. Procedurally, this appeal is developed fully and ready for Board adjudication. The RO has verified the veteran's period of service; there is no issue as to the substantial completeness of the veteran's application for VA benefits; the veteran has undergone VA examination pursuant to the application; the RO has requested and associated with the claims file all available service and postservice medical records pertinent to this appeal; VA is unaware of other unrequested records pertinent to this appeal, and; the evidence is sufficient to permit the Board to proceed with appellate review. See Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, 114 Stat. 2096, (2000). A veteran may be entitled to service connection for a disability under either a direct or secondary analysis. Direct service connection is warranted for disability resulting from disease or injury incurred or aggravated in service. 38 U.S.C.A. §§ 1110, 1131 (West 1991); 38 C.F.R. § 3.303 (2000).
Secondary service connection is warranted both for a disability caused by a service-connected disorder and for a disability aggravated by a service-connected disorder. 38 C.F.R. § 3.310(a) (2000). In the latter case, compensation is limited to the extent to which the service-connected disorder increased the severity of the secondary disorder. Allen v. Brown, 7 Vet. App. 439, 448 (1995); Jones (Wayne) v. Brown, 7 Vet. App. 134, 136-37 (1994). A service-connected secondary disorder becomes part of the original disorder. 38 C.F.R. § 3.310(a). The veteran is a decorated former Army combat soldier whose PTSD has been service-connected since July 1995. SMRs include no evidence of a sleep disorder in service and the veteran claims none. VA medical records confirm that the veteran underwent sleep studies in February and October 1998 from which he was diagnosed with sleep apnea. A VA psychiatric progress note from February 1999 briefly reviewed the studies' findings and applicable research and concluded that PTSD and its treatment "in all probability has aggravated the obstructive sleep apnea." The note further states that "it is certainly as likely as not that this veteran's sleep apnea is directly related to his PTSD." The VA physician who examined the veteran in July 1999 identified two likely causes of his sleep apnea: enlarged tonsillar tissue and obesity. The physician found no etiological connection between PTSD and enlarged tonsillar tissue. However, he acknowledged that "an argument could be made" linking the veteran's obesity with PTSD although the veteran's medical records did not include another medical opinion to that effect.

In the Board's judgment the record presents adequate evidence upon which to base a finding that the veteran's PTSD aggravated his sleep apnea. The opinion expressed in the February 1999 progress note is neither ambiguous nor equivocal on that point. The July 1999 examination report is more tentative — finding only a medical possibility of attenuated causality under a different rationale. Nevertheless, the July 1999 opinion does not refute the February 1999 opinion, and it is well established that VA itself may not refute expert medical conclusions in the record with its own unsubstantiated medical conclusions. Colvin v. Derwinski, 1 Vet. App. 171, 175. (1991). Therefore, absent medical evidence actually denying a causal linkage between PTSD and sleep apnea in this case, the Board reads the two opinions together as providing, at minimum, evidentiary equipoise which must be resolved in the veteran's favor. See 38 U.S.C.A. § 5107(b). Accordingly, the Board is constrained to find that service connection for sleep apnea is warranted here under a secondary analysis. See 38 C.F.R. § 3.310.

ORDER

Service connection for sleep apnea is granted secondary to service-connected PTSD.

WARREN W. RICE, JR.

Member, Board of Veterans' Appeals