



2011-580

Representative: Daniele Hart, BPA
Decision No: 100001645580
Decision Type: Entitlement Review
Location of Hearing: Halifax, Nova Scotia
Date of Decision: 7 June 2011

The Entitlement Review Panel decides:

WEGENER'S GRANULOMATOSIS

No entitlement granted for service in the Regular Force.
Subsection 21(2), *Pension Act*

Before:	John Morrison	Presiding Member and Writing Member
	M.A.F. Stockton	Member

Original signed by:

Reasons
delivered by:

John Morrison

INTRODUCTION

The Applicant is 68 years of age and served in the Regular Force from 3 February 1961 to 5 April 1971, including service in the Special Duty Area of Cyprus from 7 April 1966 to 17 October 1966 and from 18 October 1969 to 1 April 1970. He has requested a review of the decision of Veterans Affairs Canada of 3 November 2005 to deny pension entitlement for Wegener's Granulomatosis, pursuant to Subsection 21(2) of the *Pension Act*, Regular Force service.

PRELIMINARY MATTERS

The Applicant's spouse was sworn and provided testimony. Their date of marriage was confirmed as 1 August 1964.

ISSUES

The issue to be determined is whether the Applicant has provided sufficient evidence on which to establish that his Wegener's Granulomatosis arose out of or is directly connected, in whole or in part, to his performance of military service in the Regular Force.

EVIDENCE AND ARGUMENT

The Applicant and his spouse testified at the hearing and his Advocate provided additional documentation on his behalf, including a report dated 21 April 2009 (ER-V1) with attachments from Dr. C. McParland, a specialist in the Division of Respiriology at the QE II Health Sciences Centre, and an excerpt from *The Merck Manual of Diagnosis & Therapy* 18th Ed. at page 281.

The Applicant is basing his claim for pension entitlement on his service at CFB Gagetown and alleged exposure to Agent Orange and other herbicides during that service. He testified he was a member of the Infantry as a machine gunner and truck driver.

According to his service records, the Applicant served at CFB Gagetown from February 1961 to September 1961 for basic training before being posted to Germany from some 4 years. He served again at CFB Gagetown from 21 July 1965 to 30 April 1966, from 15 November 1966 to 17 October 1969, and from 1 April 1970 to 5 April 1971.

The Applicant had no direct involvement in the any of the spraying programs at CFB Gagetown including in June 1966 and June 1967 when Agent Orange was being tested for 3 and 4 days respectively. His evidence with respect to any spraying was somewhat vague but did say that he had some recollection of some spraying going on during basic training and at other times when he was out in the training areas. He said he recalled being told during the 1965 to 1967 period that spraying was going on for insect control. When asked if he remembered any aircraft, he said yes. When asked what type, he replied he thought they were American. When asked whether the aircraft were helicopters or aeroplanes, he replied planes.

He testified that while at CFB Gagetown he was an avid fisherman and game hunter and he ate what he caught and shot.

The Applicant was diagnosed with Wegener's Granulomatosis in 1999 following a left lobectomy in 1999, some 28 years after service.

The Merck Manual describes Wegener's Granulomatosis as an uncommon disease that usually begins as a localized granulomatous inflammation of upper or lower respiratory tract mucosa and may progress to generalised necrotizing granulomatous vasculitis and glomerulonephritis and goes on to state:

The cause is unknown, although immunologic mechanisms may play a role. Wegener's Granulomatosis occurs in about 1 in 25,000 people, is most common in whites, but can occur in all ethnic groups and at any age. The mean age at onset is 40 yr.

The Advocate requested an opinion from Dr. McParland with respect to the etiology of the Applicant's disease and its possible relationship to his service and, in particular, to his possible exposure to Agent Orange and other herbicides at CFB Gagetown.

Dr. McParland conducted an extensive review of the subject matter, which included reviewing the chemical compounds sprayed at CFB Gagetown and the 62 page Fact-Finders Report from Dr. Dennis Furlong (CFB Gagetown Herbicide Spray Programs 1952-2004). Dr. McParland also referenced the Institute of Medicine (IOM) of the National Academy's for Science with respect to a possible link between the Applicant's disease and any exposure he may have experienced at CFB Gagetown. In his report, Dr. McParland stated, in part:

The condition in this case is Wegener's Granulomatosis (WG). It is an uncommon disease (www.vasculitisfoundation.org (Opens a new Window)) that affects about 1 in 20,000 - 1 in 30,000 people. The symptoms are due to inflammation that affects many tissues in the body for reasons that are not clear. Blood vessels in those tissues become inflamed and clusters of certain cells (granulomas) may occur. It is considered a Disease of abnormal immune function. There is no known cause of WG. It is systemic: meaning it affects the body as a whole. . . .

What were the specific exposures and what was the extent of exposure? As above, the number of herbicide products, the active ingredients and the manufacturing impurities are probably more than listed in the summary tables. As outlined in Furlong Fact-Finders Report (page 32), the health risk assessment model combines exposure details with toxicity of the agent to assess hazard to the individual's health. Your information indicates that ("the Applicant") was not involved in the application of the herbicides, nor was he involved post application in brush clearing or scouting. However, Furlong's report also highlights potential incompleteness of the information available regarding potential exposures and the potential for long-term health effects from persistence of agents such as Dioxin. As outlined above, in my estimation, as persistence is a concern, then agents that were applied even in the years preceding ("the Applicant's) attendance or in the years of his absence, may still be considered as these agents may have persisted or have been amplified in that environment. The mechanisms by which the herbicides and their contaminants may have acquired access to the body (inhaled, ingested, skin absorption, etc.) are not clear.

What are the known toxicities from the agents that are known? From the information that is available, and included in the Furlong report and the IOM report update 2006, there is no proven role for any of these chemicals in causation of Wegener's Granulomatosis, or indeed any of the vasculitides. I would however, be cautious. As cited above vasculitides in general and WG in specific is an uncommon condition (1 in 20,000 - 1 in 30,000 people). Hence, an increased incidence in connection to specific exposures would require a huge population base data, which as far as we know is currently not available. It is possible that some information on a larger scale may become available in the future if further evaluations of large data bases of Veterans in the US are studied; but currently that process is stalled (Nature 2008, volume 452; 781-782). The IOM report update 2006, indicates that immune suppression can result from exposure to chemicals in the work place or in the environment, including Dioxin (page 617).

However, it is often difficult to obtain evidence that directly links the change in immune function to increased infections or cancer because of many confounding factors. WG could be thought of as a type of auto immune disease, an example of the immune system causing rather than preventing disease, where the body attacks own tissues. The conclusion in the 2006 update was that there was inadequate or insufficient information to determine whether an association existed between the exposure to the chemicals of concern (herbicides as per the Agent Orange collection) and immune systems disorders.

To check for any possible known link between any of the herbicide agents or known impurities and vasculitic type inflammation or WG, I sought citations linking the two and could not find any. Further, I checked with known authorities in the areas of inflammation and specifically authorities in vasculitides. They are not aware of any known link with herbicides (Personal communication).

Hence, I cannot find any evidence to support the herbicide related chemicals caused the WG but as above, do caution that this is a very uncommon condition and I cannot exclude their role either. . . .

In conclusion, having reviewed more extensively than initially requested, the potential chemicals that ("the Applicant") may have been exposed to during his time in military camp at Cape Gagetown, I have not been able to conclusively find evidence that his WG was caused by or triggered by any of the agents, but do caution that as this is a very uncommon condition. It is very unlikely that this connection could be made even if it existed. I do raise the possibility, although the information leading to it is also inconclusive, that the chemicals may have had some impact on his immune system function that when further added to by immunosuppressive therapy lead to a relatively early manifestation of immune system function decrease, in his instance resulting in an opportunistic infection, pneumocystis carini pneumonia.

Clearly the long term effects of many of the chemicals involved are not known, hence the 2 yearly updates by IOM. Whatever the outcome of this evaluation, I think the potential for future review if more conclusive data becomes available should remain. [*Emphasis added*] [*Information in brackets added*]

ANALYSIS/REASONS

The case to be established in claims under Subsection 21(2) of the *Pension Act* and Section 45 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* (CFMVRCA), which govern Regular Force service claims, is that the injury or disease must be one that arose out of, or is directly connected with, the Applicant's Regular Force service.

In weighing the evidence in this matter, the Panel has been fully cognizant of the provisions of Section 5 of the *Pension Act*, Section 43 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* and Section 39 of the *Veterans Review and Appeal Board Act*, which require that Applicants benefit from every reasonable inference, that the case be established through credible evidence, and that applicants be provided with the benefit of the doubt as to whether they have established a case. The Panel, however, also is aware that this does not relieve the Applicant of the burden of proving the facts required to establish entitlement to a pension or award: *Wannamaker v. Canada (Attorney General)*, (2007), 361 N.R. 266 (F.C.A.)¹.

The requirement for credible evidence and reasonable inferences, and the reasonableness requirement require that the Panel decide whether the evidence is credible and trustworthy, and not merely speculative.²

Medical opinions that arrive at an unsupported conclusion about the cause of a claimed disease do not constitute credible evidence for a pension award.³ The Panel must be able to ascertain how the expert arrived at his or her conclusion and decide on its credibility and reasonableness. The credibility and reasonableness of the evidence can be determined by how it correlates with the known medical consensus,⁴ and how well it is supported by the findings set out in medical scientific literature.⁵

The Panel is required to determine whether the facts of the case have been established and whether there is credible medical evidence establishing a relationship between the claimed condition and factors related to the Appellant's service.

The Panel is required to determine whether there is credible medical evidence establishing the attributable risk from the service factors, and then to determine if the level of risk attributable to those factors is sufficient to establish the case for a pension award.

After reviewing all of the evidence and submissions, including the testimony of the Applicant, the Panel determines, with regret, that the Applicant has not established that his Wegener's Granulomatosis and resulting disability arose out of, or is directly connected, in whole or in part, to his performance of military service in the Regular Force, including while posted to CFB Gagetown as outlined above.

The Panel finds an absence of credible, clinical or objective medical evidence to support a reasonable finding of a relationship between factors related to the Applicant's performance of military service and his condition. This would include the thoughtful report of Dr. McParland, which has been quoted extensively above.

The Panel fully acknowledges that the Applicant served at CFB Gagetown for part of his 10-year career, including during one of the known times of Agent Orange testing in June 1967, and that his service included time spent in the training areas. The Applicant appears to be vaguely aware that there was spraying, but he was not involved in any of the spraying programs, including Agent Orange, and was not sprayed or otherwise experienced direct exposure. There is no evidence of an acute exposure. He testified that he spent time in the training fields as a member of the Infantry as a machine gunner and also drove trucks. He also fished and hunted and ate what he caught and shot. There is no evidence that any of this led to anything more than mere transient, after the fact exposure, including that any of the fish and game were contaminated. The Applicant's claim, unfortunately, amounts to his having served at CFB Gagetown rather than any evidence of direct exposure.

Accordingly, the Panel finds that the Applicant has not provided sufficient evidence on which to establish that he experienced exposure to Agent Orange or other chemical herbicides of such significance as to represent a credible risk to his long term health while serving in the Regular Force at CFB Gagetown. The Applicant's claim that he was exposed to Agent Orange is, at best, speculative.

The Department of National Defence (DND) led a research program to determine the facts and circumstances relating to the use of various herbicides at CFB Gagetown between 1952 and 2004, and in particular during the testing periods of Agent Orange in June 1966 and 1967.

The Panel is satisfied that these studies represent the best evidence available at this time as to what took place at CFB Gagetown. The Panel determines that it is not unreasonable to conclude that the information now available from the independent studies conducted concerning the testing of Agent Orange in June 1966 and July 1967 and the use of herbicides at CFB Gagetown during the period from 1952 to 2004, effectively rebuts any presumption of exposure due to merely serving at CFB Gagetown during the relevant time periods.

The Panel is satisfied, given what is now known about the spraying and testing programs from 1952 to 2004, that a reasonable inference can now be drawn, in the absence of evidence to the contrary, that the numbers of those who actually experienced exposure of any significance during and after the spraying were very low, as claimed in the research results.

The *Human Health Risk Assessment Task 3A-1, Tier 1* study concluded that an individual's presence on the Base at CFB Gagetown during the testing of unregistered herbicides (i.e. Agent Orange) in 1966 and 1967

does not constitute exposure that would place an individual at risk for any long term health effects. Therefore, evidence of direct, service-related exposure, beyond merely training at the CFB Gagetown during the relevant periods, is sought in these claims. The Panel is satisfied that this also would include other spraying programs during the 1952 to 2004 period, given a lack of credible evidence to the contrary.

The Applicant in this case acknowledged that he is not aware of coming in direct contact to the chemicals during his postings to CFB Gagetown. What he does suggest is that he was exposed to the remnants of chemicals when he was working in the training areas while on exercise. The Panel, without accepting that there was any exposure, is not satisfied that there is sufficient evidence to suggest that such a casual or transient exposure as described, if any, would result in a long term health risk and, in particular, to the development of the Applicant's rare disease.

The independent studies suggest that without direct exposure there is no long term health risk.

The *Task 3A-1, Tier 1* report provides further information on potential risks to human health associated with the contaminants in unregistered herbicides (Agent Orange and other formulations) tested at CFB Gagetown.

The *Task 3A-1, Tier 1* report indicates that short term exposures, estimated for the people who were directly involved with the chemical testing, i.e. the mixers, loaders, pilots, applicators, scouts or flagmen, do not suggest they would have an increased risk for long term irreversible health effects. The report does indicate that some individuals may have been at increased risk for an increased susceptibility to the influenza virus, or other minor immunological effects, altered hormonal levels and minor skin lesions, but such effects are suggested as being short term and reversible. While Dr. McParland commented on this area, there is insufficient evidence, as he acknowledged, on which a reasonable conclusion can be based. Nor is there evidence that this relates to individuals not experiencing direct exposure or that the onset of such symptoms would be delayed for decades.

The *Human Health Risk Assessment Task 3A-1, Tier 2*, report suggests that those individuals stationed at CFB Gagetown between 1952 and 2004 who were not directly involved with the application of the herbicides used or with the clean up after their use were not at risk for long term health effects from the herbicides and their contents used at CFB Gagetown as a part of the annual spraying program.

As mentioned above, the study also suggests that even if there was short term exposure, the individuals were not at increased risk for long term illness. The studies found, based on what is known today, that soldiers, such as the Applicant, were at no increased risk of long term illness even if there was short term exposure to Agent Orange. The same report also comments on the possibility of longer term exposures for military trainees who trained near either the 1966 or 1967 spray areas following the spray applications as being low enough that no increased risk of dioxin-related illness is predicted.

The Panel acknowledges the Applicant's sincere belief that he may have been exposed to toxic chemicals during his Regular Force service posting to CFB Gagetown and that such exposure has resulted in his condition. However, the Applicant was not a member of any of the groups or similarly situated to members of those groups identified in the independent studies as being in direct contact with the chemicals. As such, any exposure to chemical herbicides, including Agent Orange, that he might have experienced, if any, would not have constituted an increased risk of long term illness.

The Panel fully acknowledges the Applicant's belief of a connection, but finds that his belief appears to be based on the fact that he was stationed at CFB Gagetown and was on exercise in the training fields at various times. The Applicant's sincere belief in the absence of credible medical and objective evidence in support effectively amounts to speculation and not informed opinion. The Federal Court has held that speculation is not a valid basis on which to base a decision.

The Panel also points out, as noted by Dr. McParland, that the Institute Of Medicine (IOM) has not found even limited or suggestive evidence of an association between exposure to Agent Orange and Wegener's Granulomatosis.

Dr. McParland appears to have done a thorough review of the available information concerning Wegener's Granulomatosis and the chemicals or herbicides in use at CFB Gagetown during the Applicant's postings and, unfortunately, was unable to uncover medical information to support the Applicant's claim, beyond the fact that Wegener's Granulomatosis is a rare disease whose cause is unknown and, therefore, we can't rule out the possibility that exposure to Agent Orange and herbicides might have something to do with the disease.

Dr. McParland's findings following his review, as referred to above, include:

- There is no proven role for any of these chemicals in causation of Wegener's Granulomatosis, or indeed in any of the vacuities.
- The conclusion of the 2006 IOM update was that there was inadequate or insufficient information to determine whether an association existed between the exposure to the chemicals of concern (herbicides as per the Agent Orange collection) and immune systems disorders.
- To check for any possible known link between any of the herbicide agents or known impurities and vasculitic type inflammation or WG, he sought citations linking the two and could not find any. He further checked with known authorities in the areas of inflammation and vasculitis and they were not aware of any known link with herbicides. Dr. McParland acknowledged that he therefore could not find any evidence to support the herbicide related chemicals caused the WG.
- Dr. McParland raised the question of whether the previous chemical agents could have influenced the Applicant's immune systems function remotely and concluded that the information about a link is not strong and have not been considered by the IOM to be conclusive.

He concluded by stating that he had not been able to conclusively find evidence that the Applicant's claimed condition of Wegener's Granulomatosis was caused by or triggered by any of the agents, but cautioned that as Wegener's Granulomatosis is a very uncommon condition, it is very unlikely that this connect could be made even if it existed.

The Panel concludes, based on the available credible evidence as to what took place at CFB Galetown with respect to the use of herbicides, including Agent Orange, that there is less than a mere possibility that the Applicant experienced exposure to Agent Orange sufficient to impact his long term health and, in particular, the development of his disease.

DECISION

Accordingly, the Panel, for the reasons mentioned above, is affirming the decision of Veterans Affairs Canada dated 3 November 2005 to deny the Applicant entitlement for his claimed condition of Wegener's Granulomatosis, pursuant to his Regular Force service.

The Board Rules:

The Board affirms the decision of Veterans Affairs Canada of 3 November 2005 to deny the Applicant pension entitlement for Wegener's Granulomatosis pursuant to Subsection 21(2) of the *Pension Act*, Regular Force service.

APPEAL RIGHTS

If you are dissatisfied with this decision, you may appeal it to an Appeal Panel of the Veterans Review and Appeal Board, which may affirm, vary or reverse the decision.

In pursuing this right of appeal, you may be represented, free of charge, by the Bureau of Pensions Advocates or a service bureau of a veterans' organization or at your expense by any other representative.

Applicable Statutes:

Pension Act, [R.S.C. 1970, c. P-7, s. 1; R.S.C. 1985, c. P-6, s. 1.]

Section 2
Section 39

Veterans Review and Appeal Board Act, [S.C. 1987, c. 25, s. 1; R.S.C. 1985, c. 20 (3rd Supp.), s. 1; S.C. 1994-95, c. 18, s. 1; SI/95-108.]

Section 3
Section 25
Section 39

Exhibits:

ER-V1: Medical report from Dr. Colm McParland dated 21 April 2009 with attached correspondence from the Bureau of Pensions Advocates dated 28 October 2008, extract from a report entitled " Final Report Task 2A: The History and Science of Herbicide use at CFB Gagetown from 1952 - Present", specifically Table 2 and Table 3 and an extract from *The Merck Manual*, Eighteenth Edition (13 pages).

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1. *Sylvain Rioux v. Canada (Attorney General)*, 2008 FC 991
 2. *Tonner v. Canada (Attorney General)*, (1995) 94 F.T.R. 314 *Elliot*, supra
 3. *Kripps v. Canada (Attorney General)* 2002 FCT 575; *Bradley v. Canada (Attorney General)* 2004 FC 996
 4. *Cramb v. Canada (Attorney General)*, 2006 FC 638
 5. *Moar v. Canada (Attorney General)*, 2006 FC 610

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