

Now that you have finished watching the hearing, please review the transcript and answer the following questions. Be prepared to discuss your findings with the class.

1. What issues were on appeal?

2. Did the service officer, Brad Hazell, make any errors during the hearing in terms of the issues on appeal, for example, the benefits requested, evidence discussed? If so, please list them below:

3. Did the service officer, Brad Hazell, make any errors during the hearing in terms of how the hearing was conducted, for example body language, how he interviewed the veteran, or what he said to the judge? If so, please list them below:

4. What are three things you would have done differently during the hearing?

5. Would it be beneficial to the appeal to provide additional evidence? If so, please provide examples.

Department of Veterans Affairs

TRANSCRIPT OF HEARING

BEFORE

BOARD OF VETERANS' APPEALS

WASHINGTON, D.C. 20420

In-Person Hearing, Washington, D.C.

IN THE APPEAL OF : Borden, Willie
C 00 000 000

DATE : April 26, 2017

REPRESENTED BY : Brad Hazell
Veterans of Foreign Wars of the United
States

MEMBER OF BOARD : Lauren Barefoot, Chairman

WITNESSES : Willie Borden, Appellant
Gabby Borden, Spouse

CHAIRMAN: Good morning, this is Lauren Barefoot presiding over a hearing of the Board of Veterans' Appeals in Washington, D.C. Today is April 26th, 2017. And we're hearing the appeal of Mr. Willie Borden, B-O-R-D-E-N. Mr. Borden is accompanied by his wife, Gabby and is represented by Mr. Brad Hazell of the Veterans of Foreign Wars. Claim number for appeal purposes today is 00 000 000.

On appeal today we have four issues. They are service connection for prostate cancer, service connection for asbestosis, an increased rating for post traumatic stress disorder currently rated at 50%, and an increased rating for bilateral hearing loss, currently rated at 0%.

Prior to going on the record Mr. and Mrs. Borden you indicated you'd be willing to take an oath so I ask you both to remain seated, and to raise your right hand.

(OATH/AFFIRMATION ADMINISTERED)

CHAIRMAN: Thank you, terrific. I'll turn it over to you Mr. Hazell.

MR. HAZELL: Ms. Barefoot thank you, ah, first I'd like to say thank you very much for the opportunity to present Mr. Borden's case. As previously stated, we are here to discuss service connection for both prostate cancer and asbestosis, along with the increased ratings for PTSD and hearing loss.

Mr. Borden is a retired United States Air Force veteran from the United States Air Force Reserve. He served on active duty from February 26th, 1960 to February 24th, 1964, he stayed in the reserves until served the rest of his career in the reserves, until he retired on April 3, 1989. During his time on active duty he was stationed in Udorn, Thailand and he was there from June 1st, 1962 to August 15th, 1962 and that's where he was exposed to Agent Orange exposure.

Ms. Barefoot so if it is ok with you I'd like to address each issue separately starting with the service connection for prostate cancer.

CHAIRMAN: Yes that's fine.

MR. HAZELL: Excellent

MR. HAZELL to Veteran:

Q. Willie what did you do while you were in the Air Force?

A. I was an aircraft mechanic, you know worked on planes mostly. But when you're in war you're doing a little of everything.

Q. Okay, ah, When you say you did a little bit of everything specifically what do you mean? What other things did you do while you were in Thailand?

A. Well, whenever we weren't working on planes, we had uh you know daily chores. You know, you know base clean-up, things like that ah, helping out supply, driving, um, that sort of thing. I always liked helping out supply because they were giving out you know good stuff, you know that we would want to have. Um, you know, I mean you know smokes, ah, were hard to come by and you know those things were given out.

Q. Okay. Um. While you were in Thailand did you ever notice them spraying anything to get rid of the foliage?

A. I never actually ah saw any spraying, but anytime the plants got high, I know we'd just make a call and you know they would just be dead.

Q. Ok and this was around the perimeter of the base?

A. Yes.

Q. Okay. ahh...

Q. So would you say that you were exposed to those herbicides?

A. Umm... Yes I was.

CHAIRMAN: Okay. So the primary contention then as I understand it is that the prostate cancer is the result of herbicide exposure during the time period when Mr. Borden was in Viet-um-Thailand?

MR. HAZELL: Yes that's correct.

CHAIRMAN: Okay.

CHAIRMAN to Veteran:

Q. And so Mr. Borden you were in Udorn for two months there, do you remember seeing, um, you said that they were spraying Agent Orange, do you know where you heard that?

A. I was told that.

Q. Okay, by who?

A. By my C.O. by my commanding officer.

Q. Oh Okay. So when was, that when you were stationed there—I'm not too familiar with the Udorn, Air Force Base, is that when it was set up for the U.S. do you remember?

MR. HAZELL: It was approximately February 1961 when Udorn was set up.

CHAIRMAN: Okay great. Uhh...So they would have been clearing up that that whole base. Okay.

MR. HAZELL: Right

CHAIRMAN to Veteran:

Q. Do you remember where your barracks were on the base Mr. Borden?

A. Ahh...At first, there was no barracks until about 3-4 weeks after I was there.

Q. Okay. So while you were at Udorn what kind of activities took you in and around the perimeter? On the fence line?

A. Umm... A 4 by 4 truck.

Q. So you were driving in and out of the base or around the base?

A. Yeah.

Q. Okay a truck so your duty was driving then?

A. Yes Yes.

Q. Okay were you doing anything else at that time?

A. Transporting Marines whenever we weren't working on the planes yes.

Q. Okay so were you driving in and out of the base? Or just within?

Q. Okay. Umm... So, So, I have to do some research into Thailand and the exposure to herbicides there but I think I understand your contentions. And is Udorn the only place you would have been exposed to Agent Orange?

A. I think so.

Q. Okay and you were never sent to Vietnam, like on TDY?

A. No.

Q. Okay. Well I think I understand the nature of the claim then.

CHAIRMAN: Is there anything else Mr. Hazel that you would like to add?

MR. HAZELL: Willie do you have anything?

VETERAN: No.

MR. HAZELL: Just that we believe that Mr. Borden was exposed to herbicides in Thailand and that service connection should be granted for prostate cancer based on that exposure.

CHAIRMAN: Okay, can we move on to the next issue then?

MR. HAZELL: Excellent, next I'd like to talk about the issue of service connection for asbestosis

MR. HAZELL to Veteran: Mr. Borden, you're currently suffering from asbestosis correct?

A. Yes, it was getting hard to breathe so about 5 years ago I saw my doctor and that's when they diagnosed me.

Q. Was that a VA doctor that diagnosed you? Or a private provider?

A. That's my VA doctor, I get care from the VA, cause I can't afford a private doctor

Q. And you submitted those records with your claim correct?

A. Yes

Q. Were you ever exposed to asbestos while you were in the Air Force?

A. Yes

Q. And that's when you were working on planes correct?

A. Yes. I worked on planes while on active duty and the reserve. I remember when I was ahh I had to refit the C-123's brakes while I was stationed at Westover.

Uhh...every time we took the drums off there was just dust everywhere.

Q. Okay and when you were working on the brakes did you ever wear any kind of protection? Any respirators?

A. No, we didn't any at that time.

Q. After you got out of the reserves, what did you do for work?

A. I worked as a heating and cooling technician for Ford.

Q. Okay did you deal with asbestos while you were there?

A. Oh, Yes ahh... we were told to wear painter's masks. I guess they thought ah would protect us. I don't know um... if they worked though. um... it was around the same time cause I became the supervisor pretty quick and uh took care. They they took care of us veterans.

CHAIRMAN to Veteran: If I may interrupt, you say you worked as a heating and cooling technician right?

A. Yes, close to 30 years, I had to retire cause my breathing was getting bad and uh my PTSD was acting up

Q. I'm sorry to hear that. But, while you were there you were working with asbestos correct?

A. Sometimes, but we wore masks

Q. Okay, Mr. Hazell you may proceed

MR. HAZELL: Thank you. As you can see, Mr. Borden was exposed to asbestos while he was in the Air Force, so service connection should be based on his diagnosis for asbestosis. Although he was exposed during his civilian career, he always wore breathing protection. Um... If it's alright with you, next I'd like to move on to service connection to the increase for bilateral hearing loss.

CHAIRMAN: Yes that's fine.

MR. HAZELL: The record shows that Mr. Borden's been service connected for hearing loss at a 0% rating since June of twenty two... June of 2010. In May of 2014 he filed a claim for increase and was denied based on the test that he provided to the VA with his claim. Mr. Borden, according to your file, it looks like your hearing test you submitted was done in August 2013. Is that correct?

MR. BORDEN: Yes it is, I took the hearing test with my doctor when I decided to get new hearing aids. Umm, see my old hearing aids umm, they were starting to fail, so whenever I tried to hear what someone was saying I had to try and read their lips and I'm not very good at that. And then I noticed, anyway I got my new hearing aids I noticed a huge difference—Unintelligible— Okay okay, yes I took the test in 2013.

MR HAZELL to Veteran: Okay, and when you took your hearing test, did the doctor ask you any questions ask you to repeat any words?

A. No I don't think so, I just sat in a booth with a clicker

Q. Okay have you received any other hearing exams since then?

A. No

Q. Now, without the use of your hearing aids, do you think your hearing has gotten better or worse?

MS. BORDEN: Can I say something?

MR. HAZELL: Of course

MS. BORDEN: My husband is straight up deaf. He is always asking me to repeat things and it's really starting to hurt our marriage. Plus at night he's listening to the discovery channel at full blast and the neighbors upstairs are complaining. I used to just deal with it but its getting worse and I don't know if I can take this much longer.

MR. HAZELL: Okay, thank you Ms. Borden. Ms. Barefoot, as you can see, Mr. Borden hasn't received a hearing examination since August 2013 which was nearly 4 years ago. Today I am requesting that Mr. Borden receive a new examination because the current exam on file is just too old to be used for rating purposes.

CHAIRMAN: Thank you Mr. Hazell, I will take that under consideration. Is there anything else you would like to add on this issue or can we move on to our final issue, the increased rating for PTSD?

MR. HAZELL: No I think we can move on. Umm, as you stated the last issue that we would like to discuss is the increased rating for PTSD which is currently at 50%

MR. HAZELL to Veteran: Mr. Borden, according to your file, you've been rated 50% for PTSD since uh... June 2010 is that correct?

A. Yeah I think so, yeah

Q. And since then would you say that your PTSD has gotten better, gotten worse, or stayed the same?

A. Umm... I would say it's gotten much worse. I'm always depressed and just not sure its worth it anymore.

Q. Okay ahh are you you currently seeing anyone for your condition?

A. Yes ahh my ahh I go to the VA psychologist and I then I participate in groups

Q. Do do those help at all?

A. Yes, I started going to group after my wife ahh... she caught me with a gun about a year ago, um pulled me out of a dark place

Q. Can you please elaborate on that? When you say caught you with a gun, what where you doing?

A. Oh I was just sitting there holding it. I was in a really dark place, and ahh...I'm not really comfortable talkin about it.

Q. Okay well I I'm glad the groups are helping you out. Now, do you happen to remember the last time you you had an examination for PTSD?

A. Umm, I think it was last fall

Q. Ok, so I have your exam report here, and it looks like that was done in November 2016 at the Washington Compensation and Pension clinic. Do you mind if we talk about that report?

A. No not at all

Q. Looking at the report it shows that you were experiencing panic attacks, is that still bothering you?

A. Yeah, I get I get them all the time, in fact I had one this morning

Q. Okay, when you say all the time, what do you mean?

A. Anytime I'm really stressed, I get panic attacks. Now that I can't um you know I can't work anymore, um I'm really stressed over money, so I get attacks a lot because I can't deal with all of it.

MR. HAZELL: Okay, Mrs. Borden, is there anything you'd like to add on that?

MS. BORDEN: Yes it's scary, because I never know what he's going to do when he gets a panic attack. Sometimes he gets real quiet and other times he tries to look for his gun. I have it hidden though, so that we don't have another incident. It's really straining our relationship because it keeps happening. It used to be only a few times a year but now its almost every day that he's stressing out and acting up. Its like he doesn't care anymore, I mean he doesn't even care about showering unless I nag him.

MR. HAZELL: I'm, I'm sorry to hear that.

CHAIRMAN to Veteran: If I may interrupt, Mr. Borden, you said um you're no longer working?

A. Yeah I had I had to quit my job at Ford about four years ago because I was getting these panic attacks at work, and I punched a guy in the face because he just pissed me off.

Q. Okay so if I have this correct, you quit your job because it was getting too stressful for you?

A. Well actually they told me ah they told me to quit or they were going to fire me after I uh the guy was late for two days um I just don't take ex... I don't take a lot of excuses and he told me it wasn't his fault and I just snapped. So they they told me to quit.

Q. Okay and you haven't worked since that time?

A. No

MS. BORDEN: Um, didn't you work last summer for that lawn company? You were cutting grass and stuff.

MR. BORDEN: No that wasn't a real job, I was just filling in for a friend. I only ah I only got paid about 20 dollars for a few days for helping out. I haven't done anything else since.

CHAIRMAN to Veteran: Okay, Mr. Borden, have you applied for Social Security benefits?

A. No, we're getting my retirement and a VA check.

Q: Okay, um have you ever heard of Individual Unemployability benefits?

A. No, what's that?

Q. It's a benefit from VA that might be available to you because you're not working any longer due to your service connected disability PTSD.

MR. HAZELL: Umm, we'll discuss that after the hearing, and determine if we should file.

CHAIRMAN: Okay well, Mr. Borden if you're not working at this time we can look into that benefit for you, if you'd like I can look into inviting a claim for IU.

MR. HAZELL: Thank you very much we really appreciate that. Now, getting back to the increase for PTSD, Mr. Borden stated here today that he is suffering from near constant panic attacks and has had violent outbursts in the past. We feel that these symptoms more appropriately warrant a 70% rating, so we ask that you increase increase Mr. Borden's rating for PTSD.

CHAIRMAN: Okay. Do we have all the treatment records for these conditions on file?

MR. HAZELL: Yes ma'am.

CHAIRMAN: Okay. Well I appreciate you coming in to talk to me today Mr. Borden, um you know I want to say thank you for your service to your country, it's very important to us here at VA. Umm, I do have to work our cases in docket order so we'll be getting to this case as soon as we can here, but unfortunately I cannot give you a timeline today. We will mail you and Mr. Hazell, your representative a copy of the decision.

Mr. Hazell do you have anything to add at this point?

MR. HAZELL: No, your honor but I would like to thank you for your time we greatly appreciate it.

CHAIRMAN: Ahh. Mr. Borden, do you have anything else you'd like to add?

MR. BORDEN: Yes I do. Do you happen to know what my rating will be once you make a decision? Beacause after talking with Brad here I think I should be at 90, and I'm gonna keep on fighting until I get this to be 90%. Umm, you, you people won the last time when you sent me to Thailand and I'm I'm gonna have to keep on fighting this until I go up to the Supreme Court. Uhh you folks treat us like garbage – Unitelligible –

CHAIRMAN: Mr. Borden, I'm sorry you feel that way but all of us here at VA do appreciate the sacrifices you've made for our country. And I will make a decision as soon as possible but I do have to take into account everything we said here today, ahh, your testimony as well as the other facts of the case. As soon as a decision is made I will be sending you and your representative a copy of that. I want to thank you for being here today.

There being nothing further, the hearing is adjourned.

MR. BORDEN: Thank you.

MRS. BORDEN: Thank you, we appreciate it.

MR. HAZELL: Thank you your honor.

CHAIRMAN: Thank you

(HEARING ADJOURNED)