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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 12-3448

HOWARD J. THOMAS, APPELLANT,

V.

ERIC K. SHINSEKI,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before BARTLEY, *Judge*.

MEMORANDUM DECISION

Note: Pursuant to U.S. Vet. App. R. 30(a), this action may not be cited as precedent.

BARTLEY, *Judge*: Veteran Howard J. Thomas appeals through counsel a September 25, 2012, Board of Veterans' Appeals (Board) decision denying entitlement to a disability evaluation in excess of 50% for post-traumatic stress disorder (PTSD). Record (R.) at 3-13.[1] This appeal is timely and the Court has jurisdiction to review the Board's decision pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). Single-judge disposition is appropriate in this case. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons that follow, the Court will set aside the September 2012 Board decision and remand the matter for readjudication consistent with this decision.

[1] The Board also remanded claims for service connection for hypertension (R. at 23-25) and total disability benefits based on individual unemployability (R. at 25-26). Because a remand is not a final decision of the Board subject to judicial review, the Court does not have jurisdiction to consider these claims. *See Howard v. Gober*, 220 F.3d 1341, 1344 (Fed. Cir. 2000); *Breeden v. Principi*, 17 Vet.App. 475, 478 (2004); 38 C.F.R. § 20.1100(b) (2013). In addition, the Board determined that Mr. Thomas withdrew his appeal of a claim for a compensable evaluation for erectile dysfunction and dismissed the claim. R. at 20, 23. Because the veteran makes no argument with respect to that issue, the Court will not address it. *See DeLisio v. Shinseki*, 25 Vet.App. 45, 47 (2011) (Court's disposition of case addressed only those portions of the Board decision argued on appeal).

I. FACTS

Mr. Thomas served on active duty in the U.S. Army from April 1969 to November 1970, including service in Vietnam. R. at 259. In October 2002, the VA regional office (RO) awarded service connection for PTSD, noting that "[r]eview of [the] file indicates a previous diagnosis of PTSD." R. at 1092. The RO assigned a 10% disability evaluation effective March 2001. R. at 1091-96.

In September 2006, Mr. Thomas filed a claim for, among other things, an increased PTSD evaluation. R. at 961-64. An October 2006 statement from his wife indicated that in response to an earthquake he "sat up all night waiting on the enemy." R. at 949. Mr. Thomas underwent a VA examination that same month. R. at 942-44. The VA examiner indicated that the claims file was not available for review, but that "there was no history of previous psychiatric diagnosis according to his report." R. at 942. Symptoms included a blunted affect, dysphoric mood, poor eye contact, insight and judgment not demonstrated, perception and thought disturbances, hearing noises "that sound like 'booms,'" and suicidal and homicidal ideation. R. at 943. The VA examiner diagnosed PTSD, but could not assign a Global Assessment of Functioning (GAF) score[2] and indicated that Mr. Thomas "may have exaggerated his symptoms as they were inconsistent with the usual reported symptoms in [PTSD]." R. at 944. The RO ordered a new examination because the October 2006 examiner did not have the benefit of reviewing the claims file. R. at 937.

Mr. Thomas underwent another VA examination in January 2007. R. at 924-28. The examiner believed Mr. Thomas exaggerated his symptoms, described him as a poor historian, and diagnosed malingering. R. at 924-28. The examiner concluded that Mr. Thomas did not demonstrate avoidance, "the cornerstone of PTSD" (R. at 928), despite his response that he did not like to talk about Vietnam (R. at 925).

In February 2007, the RO denied an evaluation in excess of 10% and proposed a finding of incompetency based upon symptoms unrelated to PTSD. R. at 920. The RO relied upon an examiner's finding based upon Mr. Thomas's self-reported inability to spell simple words, perform

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[2] The GAF scale is "a hypothetical continuum of mental health-illness" based on the degree of a patient's "psychological, social, and occupational functioning." DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 34 (4th ed. text revision, 2000) (DSM-IV-TR).

simple math calculations, and handle his funds. R. at 920-21. In June 2007, private physician Fred McQueen diagnosed PTSD, indicating that Mr. Thomas had a flat affect, problems with short-term memory such as difficulty discussing what happened the prior day, a very flat mood, and poor coping skills. R. at 913. Dr. McQueen felt that Mr. Thomas could not deal with changes in stressful situations. *Id.*

Mr. Thomas underwent another VA examination in November 2007 by a physician who had examined him several years prior. R. at 877. Mr. Thomas reported intrusive thoughts of Vietnam daily, nightmares twice per week, detachment from others, trouble sleeping, problems with concentration, and memory impairment; however, the examiner diagnosed malingering and found it "difficult to offer any type of opinion about his ability to work or his ability to relate to other people because of his inconsistencies of his report." R. at 879-80. In January 2008, the RO continued to deny an evaluation in excess of 10%. R. at 860.

In a July 2008 letter, Dr. McQueen opined that Mr. Thomas's PTSD had worsened over the years. R. at 856. Dr. McQueen stated that Mr. Thomas had problems with interpersonal relationships, suffered mood swings, and was easily agitated. *Id.* He disagreed with the VA examiner's report that Mr. Thomas was malingering. *Id.* He concluded that the November 2007 VA examination report "clearly" denoted symptoms consistent with PTSD. *Id.*

In November 2008, Mr. Thomas underwent a VA PTSD examination by the same physician who provided the October 2006 examination. R. at 844-47. Mr. Thomas indicated, among other things, that he isolated and withdrew to avoid conflicts, had daily intrusive thoughts of Vietnam, engaged in sporadic employment, had been incarcerated for fighting with his wife, and on occasion heard noise like gunfire when no one was there. R. at 845-86. The examiner indicated that Mr. Thomas's speech was very limited and he was unwilling or unable to describe symptoms. R. at 846. The examiner further noted that Mr. Thomas denied knowing the first president of the United States, stated that 5+4 equaled 20, and said that the colors of the U.S. flag were red and white. *Id.* Based on these findings, the examiner diagnosed PTSD and deferred assigning a GAF score due to lack of effort and possible symptoms of exaggeration. R. at 846. In December 2008, the RO denied an increased evaluation. R. at 836-43.

A December 2008 evaluation from a private licensed psychotherapist, Mr. Willie J. Alexander, noted that Mr. Thomas was being seen for "debilitating mood disturbances" and because "[h]e began to [be] very concerned about his state of mind and emotions." R. at 815. Mr. Alexander noted symptoms of "irritability or outbursts or anger," difficulty concentrating, and avoidance behavior. R. at 813, 815. He noted that Mr. Thomas had, among other things, a severe mood disturbance, and concluded that he suffered deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood. R. at 822. Mr. Thomas was noted to be currently employed assisting in a trucking business since "he can[no]t meet the criteria to work for others with his psychological deficits." R. at 819. His "prognostic indications were poor to guarded." R. at 820. Mr. Alexander diagnosed PTSD and generalized anxiety disorder and reported that Mr. Thomas's "issues certainly, have validity with his performance on his standardized tests." *Id.* Mr. Alexander concluded that Mr. Thomas was too disabled to work and assigned a GAF score of 49.[3] R. at 820, 822.

As to the reliability of Mr. Thomas's statements, Mr. Alexander stated:

> On the basis of observation of this person for numerous hours, on a number of different occasions and within a clinical setting, internal consistency of the information and history gathered by different sources[,] I consider this client to be an adequately reliable informant for current purposes.

R. at 817. Under the heading "Validity/Representiveness," Mr. Alexander indicated that the "[r]esults are believed to be an accurate representation of this client's current level of functioning" and that "[h]e attempted to be cooperative with the interview, and indeed was helpful." R. at 819. Under the heading "Accuracy," the psychotherapist reported that

> The client appears to be a fairly good historian. His response to questions appeared to be symptomatic of his attempts to present a clear picture [and] appeared free of conscience distortions. This client appeared to make a sincere attempt on one of his inventories to be non defensive about what he was saying: his low K scale indicates his willingness to be non-defensive. His MMPI-2 Profile [Minnesota Multiphasic Personality] was a cry for help. He expressed himself with great confidence, as though totally unaware of any mistakes or confusions. He was also questioned extensively and creatively, and it appeared possible to get a clear picture of more

[3] A GAF score between 41-50 denotes: "Serious symptoms . . . OR any serious impairment in social, occupational, or school functioning." DSM-IV-TR at 34.

> information from his descriptions of what occurred d[ur]ing the incidents described. This can be considered accurate to the best of this client's ability.

R. at 819. Under the heading "Trustworthiness/Honesty/Malingering," Mr. Alexander reported that

> This client[']s overall psychological adjustment tends to be a balanced self-appraisal which includes appropriate self-disclosure and self protection. His profile is a cry for help. In terms of affect[,] [a]nxiety, irritability, tension and depression can be expected. Because of his validity scale in all probabilities this client can be said to be honest and representative of his personality profile. Please be advised that any standardized tests were administered at the above address and [the] score[] interpreted by a computer[-]generated score interpretation on the MMPI-2. Client does not appear to be [m]alingering.

Id.

In June 2009, the RO continued the denial (R. at 741, 60), and Mr. Thomas perfected his appeal to the Board (R. at 735-38). In October 2009, Mr. Thomas submitted a September 2009 addendum from the December 2008 private therapist in which the therapist stated that Mr. Thomas experienced sudden, discrete anxiety attacks lasting generally between 15 to 30 minutes. R. at 718.

A November 2009 VA PTSD examination resulted in a GAF score of 55.[4] R. at 714. Mr. Thomas reported that he quit his job because he had to be around too many people. R. at 713. He reported frequent anger, nightmares, and intrusive thoughts. R. at 712. He reported that he tended to isolate himself from others in an effort to avoid getting angry; experienced suicidal and homicidal ideation; had no friends or any recreational, social or community activities; and suffered a depressed mood, loss of interest, and decreased appetite. *Id.* The examiner noted that Mr. Thomas's short-term memory and concentration were somewhat impaired and that he experienced significant symptoms of PTSD despite treatment, which resulted in a moderate level of impairment in social and occupational functioning. R. at 714. A March 2010 addendum indicated that the examiner did not observe malingering during the November 2009 examination, despite having observed it in a prior examination. R. at 627.

In March 2010, the RO granted an increased 50% evaluation for PTSD. R. at 616-24; *see also* R. at 499-502, 612-15. In April 2011, Mr. Thomas underwent another VA PTSD examination.

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[4] A GAF score between 51 and 60 denotes "[m]oderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers)." DSM- IV-TR at 34.

R. at 472-75. He continued to report feeling angry and irritable, having flashbacks about Vietnam, and experiencing sleep difficulty. R. at 473. The examiner felt the examination was not reliable or valid given the vague and inconsistent responses and withheld a diagnosis because none was possible without resorting to mere speculation. R. at 474. During an April 2012 Board hearing, Mr. Thomas testified that he had thoughts of hurting himself and others, had no control over his quick anger, had no friends, experienced daily panic attacks, and sometimes did not go to work because he was upset. R. at 37, 39. His wife also testified that he frequently yelled, had no friends, had no hobbies or activities, and kept mostly to himself. R. at 37.

In the decision on appeal, the Board denied entitlement to a disability evaluation in excess of 50%. R. at 3-23. It found the evidence failed to establish symptoms sufficient to reflect impairment consistent with a 70% evaluation. R. at 13-17. The Board focused on the following evidence: the July 2008 and September 2008 letters from Dr. McQueen, the December 2008 private psychotherapist's report, and the November 2009 and April 2011 VA examination reports. *Id.* In addition, the Board found Mr. Thomas not credible and found that, although his spouse's statements were credible, they did not show that Mr. Thomas had symptoms consistent with an evaluation higher than 50%. R. at 17-18. This appeal followed.

II. ANALYSIS

Mr. Thomas argues on appeal that in denying entitlement to an evaluation in excess of 50% for PTSD (Appellant's Brief (Br.) at 8-11), the Board failed to adequately consider all relevant evidence, including findings of the December 2008 private psychotherapist, Mr. Alexander, and failed to adequately consider the effects of PTSD symptoms (*id.* at 11-16). The Secretary argues that, because the Board found Mr. Thomas not credible, the Board correctly concluded that the symptoms described during his examinations were not believable. Secretary's Br. at 11-14. The Secretary also argues that, because Mr. Thomas's spouse's statements were based on his observed behavior, and because he was determined to be a malingerer and not credible, her testimony as to his symptoms was not reliable. R. at 12-13. In his reply brief, Mr. Thomas argues that, as to the medical examinations that specifically found he was not malingering, the Board could not find his statements incredible or an exaggeration because that would violate *Colvin v. Derwinski*, 1 Vet.App.

171, 175 (1991), whereby the Board would be invoking its own unsubstantiated medical opinion to contradict a medical expert. Reply Br. at 3-4. He also argues that the Board did not find his spouse's testimony not credible. *Id.* at 5.

A. The Board's Credibility Determination

The Court will first address the Board's determination that Mr. Thomas is not credible. The Board essentially found, and the Secretary argues, that as a result of this determination the symptoms he reported during his examinations throughout the entire claim period need not be accepted as reliable. Secretary's Br. at 11-14.

In rendering its decision, the Board is required to provide a written statement of reasons or bases for its "findings and conclusions[] on all material issues of fact and law presented on the record." 38 U.S.C. § 7104(d)(1). The statement must be adequate to enable a claimant to understand the precise basis for the Board's decision and to facilitate review in this Court. *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990). To comply with this requirement the Board must analyze the credibility and probative value of the evidence, account for the evidence that if finds persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant. *Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff'd per curiam*, 78 F.3d 604 (Fed. Cir. 1996) (table).

In concluding that Mr. Thomas's statements relating PTSD symptoms should be discounted as not credible, the Board simply noted that, while the December 2008 psychotherapist and the November 2009 VA examiner determined that the veteran was an accurate reporter of symptoms and not malingering, other examiners found that he was exaggerating symptoms. R. at 17-18. The Board then conclusorily stated that the overall weight of the evidence indicates a lack of credibility on the part of the veteran. R. at 17-18. The Board is clearly required to make credibility determinations where necessary to a decision. *See Caluza*, 7 Vet.App. at 506. However, given the detailed description of the December 2008 examiner in opining that the veteran was credible and other reasons outlined below, the Board's credibility determination lacks sufficient reasons or bases. *See Gilbert*, 1 Vet.App. at 7.

The December 2008 private psychotherapist, Mr. Alexander, relied on interviews and observations, clinical testing, and information gathered from different sources in finding that Mr.

Thomas was a good historian and not a malingerer. R. at 817. He stated that "on the basis of observation of this person for numerous hours, on a number of different occasions and within a clinical setting," and based on the "internal consistency of the information and history gathered by different sources," he considered Mr. Thomas a reliable informant as to symptoms and history. R. at 817-18. The psychotherapist explained that he also relied upon a "low K scale [which] indicates [Mr. Thomas's] willingness to be non-defensive" and on "a computer generated score interpretation on the MMPI-2" in forming his conclusion that Mr. Thomas was a good historian.[5] R. at 819.

The Board did not discuss the foundation of the December 2008 private psychotherapist's determination that Mr. Thomas was reliable, trustworthy, honest, and accurate, i.e., the fact that he relied on clinical testing as well as observation and information from other sources in forming his assessment. Nor did the Board discuss the fact that the November 2009 VA examiner specifically determined that, in contrast to his own earlier assessment, Mr. Thomas in November 2009 showed no evidence of malingering. R. at 627. In addition, examination reports that the Board characterized as finding exaggeration on the part of the veteran in fact merely noted that the veteran "may have" been exaggerating or that he was "possibly" exaggerating. R. at 846, 937. Moreover, the Court cannot help but note that several bases provided by the April 2011 examiner for finding the veteran "inconsistent" do not demonstrate inconsistency. For example, the examiner finds the veteran inconsistent because at one point during the examination the veteran stated that he had a "good" wife who took care of him and he later complained that his wife did not understand him and was difficult. R. at 474.

For the above reasons, including the specific and detailed explanations finding Mr. Thomas credible in December 2008, the Board provided inadequate reasons or bases for discounting all of the veteran's statements regarding his symptoms throughout the entire claim period. Remand is therefore required. *See Tucker v. West*, 11 Vet.App. 369, 374 (1998) (holding that remand is the appropriate remedy "where the Board has incorrectly applied the law, failed to provide an adequate statement of reasons or bases for its determinations, or where the record is otherwise inadequate").

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[5] *See generally* Jane C. Duckworth & Wayne P. Anderson, MMPI & MMPI-2: INTERPRETATION MANUAL FOR COUNSELORS AND CLINICIANS, 33-82 (4th ed. 1995) (explaining the validity scales for the MMPI tests).

B. Increased Evaluation for PTSD

Although the Court has concluded that remand is warranted for the Board to reassess and provide reasons or bases for its credibility determination, the Court will address the Board's assessment of the veteran's disability level due to PTSD. *See Quirin v. Shinseki*, 22 Vet.App. 390, 396 (2009) (holding that, to provide guidance to the Board, the Court may address an appellant's other arguments after determining that remand is warranted).

Pursuant to 38 C.F.R. § 4.130, Diagnostic Code (DC) 9411 (2013), the criteria for a 50% disability evaluation are:

> [o]ccupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (*e.g.*, retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships.

The criteria for the next higher evaluation of 70%, requires

> [o]ccupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances to establish and maintain effective relationships.

Id.

Use of the term "such as" in the criteria for a 70% evaluation under § 4.130 indicates that the list of symptoms that follows is "non-exhaustive," meaning that VA is not required to find the presence of all, most, or even some of the enumerated symptoms to assign a 70% evaluation. *Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 115 (Fed. Cir. 2013); *see Sellers v. Principi*, 372 F.3d 1318, 1326-27 (Fed. Cir. 2004); *Mauerhan v. Principi*, 16 Vet.App. 436, 442 (2002). However, because "[a]ll nonzero disability levels [in § 4.130] are also associated with objectively observable symptomatology," and the plain language of the regulation makes it clear that "the veteran's impairment must be 'due to' those symptoms," "a veteran may only qualify for a given disability

rating under § 4.130 by demonstrating the particular symptoms associated with that percentage, or others of similar severity, frequency, and duration." *Vazquez-Claudio*, 713 F.3d at 116-17. "[I]n the context of a 70[%] rating, § 4.130 requires not only the presence of certain symptoms but also that those symptoms have caused occupational and social impairment in most of the referenced areas." *Id.* at 117. Thus, assessing whether a 70% evaluation is warranted requires a two-part analysis: "The . . . regulation contemplates[: (1)] initial assessment of the symptoms displayed by the veteran, and if they are of the kind enumerated in the regulation[; and (2)] an assessment of whether those symptoms result in occupational and social impairment with deficiencies in most areas." *Id.* at 118.

The Board's determination of the appropriate degree of disability is a finding of fact subject to the "clearly erroneous" standard of review set forth in 38 U.S.C. § 7261(a)(4). *See Smallwood v. Brown*, 10 Vet.App. 93, 97 (1997). "A factual finding 'is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Hersey v. Derwinski*, 2 Vet.App. 91, 94 (1992) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). As previously noted, in its statement of reasons or bases the Board must account for the evidence it finds persuasive or unpersuasive and provide reasons for its rejection of any material evidence favorable to the claimant. *Caluza*, 7 Vet.App. at 506, and *Gilbert*, 1 Vet.App. at 57. Merely listing evidence before stating a conclusion does not constitute an adequate statement of reasons or bases. *Dennis v. Nicholson*, 21 Vet.App. 18, 22 (2007).

Here, the Board's analysis fell short in several respects. First, as noted by Mr. Thomas, the Board failed to properly consider evidence of symptoms that would denote a 70% evaluation under the rating schedule. Although the Board acknowledged Mr. Thomas's obsessional behavior, a symptom contemplated under the DC for a 70% evaluation (R. at 18), it failed to acknowledge evidence regarding his severe mood that affects his functioning. Notably, the December 2008 private psychotherapist, Mr. Alexander, remarked that Mr. Thomas was being referred to him because he was experiencing "debilitating mood disturbances." R. at 815. Mr. Alexander noted that Mr. Thomas's mood disturbance was severe. R. at 822. He further explained that "[t]his client has been fairly consistent with his complaints in regards to his Depressive Episodes and history, and is close to Major depression recurrent; however, is consistent for [PTSD] and Anxiety." R. at 820. Dr.

McQueen noted problems with interpersonal relationships and mood swings (R. at 856), and the November 2009 VA examiner noted a "depressed mood, loss of interest and decreased appetite" (R. at 712). Although a 50% evaluation accounts for "disturbances of motivation and mood," the Board should have addressed whether the above evidence would suggest "depression affecting the ability to function independently," which is symptomatic of a 70% evaluation.

In addition, the Board provided inadequate reasons or bases for finding that Mr. Thomas did not have "impaired impulse control," a symptom contemplated by a 70% evaluation. The Board acknowledged evidence that Mr. Thomas was easily agitated, got angry a lot, and frequently wanted to fight. R. at 15-17. It found that he did not have impaired impulse control, however, because he avoided confrontations by isolating himself. R. at 16. The Board failed to adequately explain why Mr. Thomas did not lack impulse control when he had to isolate himself to avoid a confrontation. His wife, whom the Board found credible (R. at 18), testified he was irritable, gets angry, slams things, and yells a lot (R. at 37). The record also indicates that he has been arrested for involvement in physical altercations with his spouse and was incarcerated for domestic violence. R. at 474, 820, 839, 846, 878. Thus, the Board not only provided inadequate reasons or bases for its finding that Mr. Thomas does not lack impulse control but also erred by failing to address pertinent evidence that appears to support a lack of impulse control.

Furthermore, to the extent that Mr. Thomas isolates himself to avoid becoming angry with others in social and work settings (R. at 712, 819-20, 845), the Board failed to consider how this impacts his disability level. The Court has made clear that the list of symptoms in DC 9411 is not exhaustive, but rather permits consideration of other symptoms. *Mauerhan*, 16 Vet.App. at 442-443. Thus, the Board should have considered Mr. Thomas's self-imposed isolation to avoid conflict in social and work settings in assigning an evaluation.

VA is to consider all symptoms of a claimant's condition that affect the level of occupational and social impairment. *Id.* at 443. More specifically, in the context of a 70% evaluation, § 4.130 requires not only the presence of certain symptoms but also that the symptoms cause occupational and social impairment in most areas. *Vazquez-Claudio*, 713 F.3d at 117. In this instance, not only did the Board fail to properly consider severe mood symptoms, impaired impulse control, and self-imposed isolation, as previously discussed, but also failed to consider evidence that indicated Mr.

Thomas had no friends, was unable to engage in any social activities, and was unable to work due to his symptoms. R. at 37. In addition, the 2009 VA examination noted that Mr. Thomas denied recreational, social, or community activities, and denied having friends. R. at 713. By failing to appropriately consider and fully discuss the foregoing evidence, the Board did not adequately consider whether Mr. Thomas experienced "occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood." 38 C.F.R. § 4.130, DC 9411; *see also Vazquez-Claudio*, 713 F.3d at 117.

The Board also failed to meaningfully analyze whether the veteran demonstrated more than mere difficulty in establishing effective work relationships, which is characteristic of a 50% evaluation. There is evidence in the record that Mr. Thomas's symptoms severely impact his ability to work. For example, the December 2008 private therapist found that Mr. Thomas "should be considered disabled to work" due to PTSD symptoms (R. at 822), and the November 2009 VA examiner noted that Mr. Thomas could not continue his job because it required him to be around too many people (R. at 713). The Board pointed out that both of these examiners found Mr. Thomas an accurate reporter of symptoms but failed to analyze whether this evidence showed a deficiency in the area of work relative to occupational impairment that is more consistent with a 70% evaluation.

Thus, because the Board failed to consider all Mr. Thomas's relevant symptoms, and failed to provide meaningful analysis as to whether the symptoms caused occupational and social impairment with deficiencies in most areas, warranting a 70% evaluation, the matter is remanded for readjudication consistent with the foregoing. *See Vazquez-Claudio*, 713 F.3d at 116-117.

On remand, the Board must consider Mr. Thomas's claim for an increased disability evaluation in light of the analysis required under § 4.130 and must draft a statement of reasons or bases that considers the appropriate symptoms and relevant evidence and adequately informs Mr. Thomas of the precise basis for the decision. Mr. Thomas is free on remand to submit additional evidence and argument, including the arguments raised in his brief to this Court, in accordance with *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order), and the Board must consider any such evidence or argument submitted. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002). The Board shall proceed expeditiously, in accordance with 38 U.S.C. §§ 5109B and 7112.

III. CONCLUSION

Upon consideration of the foregoing, the Board's September 25, 2012, decision is SET ASIDE, and the matter is REMANDED for readjudication consistent with this decision.

DATED: May 12, 2014

Copies to:

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VA General Counsel (027)