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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 15-0665

FREDRICK GARCIA, APPELLANT,

V.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before KASOLD, *Judge*.

MEMORANDUM DECISION

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

KASOLD, *Judge*: Veteran Fredrick Garcia appeals through counsel that part of an October 23, 2014, decision of the Board of Veterans' Appeals (Board) that denied benefits for a bilateral-hip disability. Mr. Garcia argues that the Board erred by (1) providing inadequate reasons or bases for its decision, and (2) failing to ensure that the Secretary complied with the duty to assist. The Secretary disputes these arguments. Single-judge disposition is appropriate. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons discussed below, that part of the Board decision on appeal will be set aside and the matter remanded for further adjudication.

In support of his first argument, Mr. Garcia contends that the Board inadequately (1) addressed his theory that his current disabilities are related to his strenuous in-service duties as reflected by the lack of specific discussion regarding those duties, and (2) explained the basis for finding him not credible. In support of his second argument, Mr. Garcia contends that (1) a March 2012 VA medical report relied on by the Board was inadequate for Board decision, (2) service medical records were not obtained, and (3) updated medical records were not provided to the March 2012 VA examiner.

The Board's decision, however, frustrates judicial review for another reason. Specifically, the record contains an April 2012 private doctor's opinion that Mr. Garcia's in-service duties likely

caused his current hip disability, yet the Board failed to address this opinion despite the obligation to address all potentially material favorable evidence. *Thompson v. Gober*, 14 Vet.App 187, 188 (2000) (per curiam order). Remand is warranted. *See Tucker v. West*, 11 Vet.App. 369, 374 (1998) ("[W]here 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, a remand is the appropriate remedy."); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995) (holding that the Board's statement "must be adequate to enable a claimant to understand the precise basis for the Board's decision, as well as to facilitate review in this Court").

Mr. Garcia's specific contentions are not persuasive as they stand, but in light of the failure of the Board to address the potentially, materially favorable evidence noted above, the Board necessarily has to re-weigh the evidence and re-explain its decision such that Mr. Garcia's contentions are either moot or better addressed below in the first instance. *See Dunn v. West*, 11 Vet.App. 462, 467 (1998) (remand of claim under one theory moots the remaining theories advanced on appeal); *see also Webster v. Derwinski*, 1 Vet. App. 155, 159 (1991) (Court is not to conduct de novo factfinding but rather to remand the matter to the Board for it to find facts in the first instance, subject to later review by the Court). Mr. Garcia may also may present any additional evidence and arguments in support of the remanded matter, and the Board must consider any evidence and argument so presented. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002). This matter is to be provided expeditious treatment on remand. *See* 38 U.S.C. § 7112.

Upon consideration of the foregoing, that part of the October 23, 2014, Board decision on appeal is SET ASIDE and the matter REMANDED for further adjudication.

DATED: September 9, 2016

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