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**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

No. 15-3844

WILLIAM EVANS, APPELLANT,

v.

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

Before GREENBERG, *Judge*.

**MEMORANDUM DECISION**

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

GREENBERG, *Judge*: The appellant, William Evans, appeals through counsel that part of an August 7, 2015, Board of Veterans' Appeals (Board) decision that denied the appellant entitlement to service connection for (1) cardiac disease as a result of Agent Orange exposure and (2) a skin disorder resulting from Agent Orange exposure.<sup>1</sup> Record (R.) at 2-17. The appellant argues that the Board erred by (1) improperly weighing the evidence; (2) misinterpreting law by failing to develop evidence related to the appellant's potential exposure in Thailand; and (3) failing to provide an adequate statement of reasons or bases for its *McLendon* analysis. Appellant's Brief at 1-8. For the following reasons, the Court will vacate that part of the Board's August 2015 decision on appeal and remand the matters for readjudication.

Justice Alito noted in *Henderson v. Shinseki* that our Court's scope of review in this appeal is "similar to that of an Article III court reviewing agency action under the Administrative Procedure Act, 5 U.S.C. § 706." 562 U.S. 428, 432 n.2 (2011); *see* 38 U.S.C. § 7261. The creation of a special court solely for veterans, and specified relations of veterans, is consistent with congressional

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<sup>1</sup>The Board also denied the appellant service connection for a right shoulder injury. The appellant presents no argument as to this matter and the Court deems it abandoned. *See Pederson v. McDonald*, 27 Vet.App. 276, 285 (2015) (en banc) (holding that, where an appellant abandons an issue or claim, the Court will not address it).

intent as old as the Republic. *See Hayburn's Case*, 2 U.S. (2 Dall.) 409, 410 n., 1 L. Ed. 436 (1792) ("[T]he objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress."). "The Court may hear cases by judges sitting alone or in panels, as determined pursuant to procedures established by the Court." 38 U.S.C. § 7254. Accordingly, the statutory command of Congress that a single judge may issue a binding decision, pursuant to procedures established by the Court, is "unambiguous, unequivocal, and unlimited." *Conroy v. Aniskoff*, 507 U.S. 511, 514 (1993); *see generally Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990).

The appellant is a Vietnam veteran who served on active duty in the U.S. Army from March 1963 to February 1986. R. at 109, 236, 251, 255. The appellant was stationed in Thailand from August 1967 to December 1967. *See* R. at 9, 134, 1028, 1034. During this time he served as an administrative specialist at U-Tapao Air Force Base. *See* R. at 9, 1026.

In April 1972, the appellant was diagnosed with left foot cellulitis. R. at 808. An October 2003 magnetic resonance imaging (MRI) report found that the appellant suffered from recurrent carotid artery stenosis. R. at 589. A November 2005 biopsy performed on the appellant's feet revealed psoriasiform dermatitis. R. at 1091. In August 2007 the appellant underwent coronary bypass surgery (R. at 587), and a November 2008 treatment record shows that the appellant had a history of coronary artery disease (R. at 625). The appellant's December 2008 treatment records show a diagnosis of dermatitis, psoriasis, and dyshidrosis, and noted lesions on the appellant's palms and feet. R. at 1120.

In February 2009, the appellant applied for entitlement to benefits based on service connection for his heart condition and the bilateral skin condition of his feet. R. at 1507. The appellant requested service connection on a theory of Agent Orange exposure. R. at 1507. In response VA requested that the appellant provide information regarding his service in Vietnam. R. 513-22. The appellant responded with his service records showing that he served in Thailand during the Vietnam era, was treated at the USAF Hospital at U-Tapao Air Force base in September 1967, and was awarded the Vietnam Campaign medal.

In May 2009 a Joint Services Records Research Center (JSRRC) memorandum concluded that there was no record that the Veteran was physically present in Vietnam during his duty. R. at 577. Without requesting any additional information from the appellant, an October 2009 JSRRC

memorandum reiterated that there was no record that the Veteran was physically present in Vietnam during his active duty. R. at 539.

In August 2015, the Board issued a decision denying the appellant service connection for cardiac disease and the skin disorder of his bilateral feet. R. 1-19. This appeal ensued.

The Court concludes that the Board provided an inadequate statement of reasons or bases for ensuring that the duty to assist was satisfied. *Gilbert v. Derwinski*, 1 Vet.App. 49, 56-57 (1990) (detailing that in each of its decisions, the Board is required to provide a written statement of the reasons or bases for its findings and conclusions adequate to enable an appellant to understand the precise basis for the Board's decision as well as to facilitate review in this Court). In its decision the Board explained that "VA has determined that a special consideration of herbicide exposure on facts found . . . should be extended to those veterans whose duties placed them on or near the perimeters of [U-Tapao air force base]." R. at 8. The VA has a duty to assist claimants in acquiring information regarding their potential Agent Orange exposure in Thailand and to provide such information when necessary. *See* VA Adjudication Procedures Manual, M21-1, pt. IV, Subpt. ii, ch. 2, sec. C (highlighting that if need be VA must ask the veteran for the approximate dates, location, and nature of the alleged exposure in *Thailand*). Although the appellant was asked about his service in Vietnam, the appellant was never asked to provide information regarding his potential Agent Orange exposure in Thailand. Remand is required for the Board to provide an adequate statement of reasons or bases for its finding that the duty to assist has been satisfied.

Because the Court is remanding the appellant's claim, it will not address his remaining arguments. *See Dunn v. West*, 11 Vet.App. 462, 467 (1998) (remand of the appellant's claim under one theory moots the remaining theories advanced on appeal). On remand, the appellant may present, and the Board must consider, any additional evidence and arguments. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002). The remanded matter is to be provided expeditious treatment. *See* 38 U.S.C. § 7112; *see also Hayburn's Case*, 2 U.S. at 410 n. (1792) ("[M]any unfortunate and meritorious [veterans], whom Congress have justly thought proper objects of immediate relief, may suffer great distress, even by a short delay, and may be utterly ruined, by a long one . . . ." (internal quotation marks omitted)).

For the foregoing reasons, and on review of the record, the August 7, 2015, Board decision is VACATED, and the matter is REMANDED for readjudication.

DATED: November 30, 2016

Copies to:

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VA General Counsel (027)