

BRIEF OF APPELLANT

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

16-1561

EVANIE E. ATENCIO,

Appellant,

v.

ROBERT A. MCDONALD
SECRETARY OF VETERANS AFFAIRS,

Appellee

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ISSUES PRESENTED FOR REVIEW

- I. The Board misinterpreted 38 C.F.R. § 3.317 (2016) to preclude service connection for GERD, as it determined that it was not a functional gastrointestinal disease. However, the Board failed to consider whether Ms. Atencio's condition was otherwise characterized as a medically unexplained chronic multisymptom illness such that service connection could be warranted under section 3.317.
- II. The Board denied service connection for GERD on a direct basis. Its decision, however, fails to comply with the applicable law and relies on an inadequate medical opinion.
- III. The Board also denied secondary service connection based on the conclusions of the 2014 VA examiner. A review of the examiner's opinion fails to establish that the examiner properly addressed the issue of aggravation.

STATEMENT OF THE CASE

Ms. Atencio served on active duty in the Air Force from March 1988 to May 1988, R-3, and January 1991 to July 1991. R-1700. During her second period of service she served in Operation Desert Shield/Storm. R-1700.

In 1998, she complained to her doctor that she had a history of "some significant dyspepsia." R-1642 (1641-42). The doctor prescribed her Zantac. R-1642. In May 1998, she reported difficulty breathing, epigastric and anterior chest pain and

acidic burning sensation in her throat. R-1651 (1649-53). Her diagnosis of GERD was confirmed in early 1999. R-1649. While she found that Zantac helped to relieve her symptoms, she reported fairly significant symptoms without medication. *Id.* An endoscopy from this time period revealed longitudinal erosions of the esophagus, and a moderate size hiatus hernia. R-1423. In March 1999, she sought emergency treatment for pain related to her GERD which started after eating a salad. R-248-50. In May 1999, Ms. Atencio underwent a Nissen fundoplication procedure to treat her GERD. R-1429. In August 1999, her doctor noted that her need for this procedure was likely to be due to chemical exposure in Saudi Arabia. R-1378.

In June 2000, the RO awarded Ms. Atencio service connection for sinusitis but denied her service connection for GERD. R-1435-58. In March 2001, she appealed this decision citing her exposure to chemicals in the Persian Gulf as the cause of her condition. R-1432. However, she failed to perfect this appeal to the Board. *See* R-1174-84 (Feb. 2002 statement of the case only addressing sinusitis).

By January 2006, Ms. Atencio began suffering from worsening gastrointestinal symptoms. R-539. A letter from her doctor indicated that her Nissen fundoplication had loosened and additional correction was possible. *Id.*

Ms. Atencio requested to reopen her claim for service connection for GERD in February 2006. R-1011. The RO denied her request in a November 2006 rating decision. R-862-68. She filed a timely notice of disagreement in January 2007. R-836.

A statement of the case was issued in August 2007. R-824-32. Ms. Atencio perfected her appeal to the Board the following month. R-823.

In January 2010, Ms. Atencio underwent another Upper Gastrointestinal Series. R-227. The results revealed a partially unwrapped Nissen fundoplication, severe GERD, and a small sliding-type hiatal hernia. *Id.* The following month, Ms. Atencio again complained of pressure under the xiphoid process and a sensation that food was catching in this area. R-297; *see also* R-537-38.

Ms. Atencio testified before the Board in April 2010. R-683-710. She explained that she first recalled experiencing symptoms of GERD around 1993 or 1994. R-703. She said it started as a burning sensation in her chest, but she was told it was indigestion and she treated her symptoms with Tums. *Id.* Later, in 1997 she sought emergency treatment for esophageal pain and that is when she was told her esophagus was charred. R-704.

The Board remanded Ms. Atencio's claim in February 2011. R- 658-60; *see also* R-491-510 (August 2012 Supplemental Statement of the Case). Her appeal was again remanded in November 2012 to afford her a new hearing. R-461-63. A hearing was held in April 2013. R-449-57. The Board reopened Ms. Atencio's claim for service connection for GERD in a July 2013 decision, but remanded the claim for additional development. R-425-45.

Ms. Atencio underwent a VA examination in April 2014. R-173-178. The examiner opined that her condition was not directly related to her military service, and that it was not caused by any of her service-connected conditions. *Id.*

The Board issued another decision in March 2015 in which it denied service connection for GERD. R-94-104. This decision was vacated by a joint motion for remand in November 2015. R-21; R-16-20. The JMR instructed the Board to consider Ms. Atencio's claim in light of 38 C.F.R. 3.317 (a)(2)(ii) (2016). R-17. Ms. Atencio's representatives also submitted further argument to support her entitlement to service connection under this regulation and under 38 C.F.R. § 3.310. R-28-30.

The Board issued the most recent decision in this matter on March 28, 2016. R-1-15. The Board denied Ms. Atencio's claim under all applicable provisions of law. R-4-5. It found that GERD was not a functional gastrointestinal disease so that service connection under 38 C.F.R. § 3.317 could not be established. R-7. It also found that the probative evidence of record weighed against a finding of either direct or secondary service connection. R-7-11. This appeal ensued.

SUMMARY OF THE ARGUMENT

The Board misinterpreted 38 C.F.R. § 3.317 (2016) to preclude service connection for GERD, as it determined that it was not a functional gastrointestinal disease. However, the Board failed to consider whether Ms. Atencio's condition was otherwise characterized as a medically unexplained chronic multisymptom illness such that service connection could be warranted under section 3.317. This was prejudicial

as the evidence of record suggests that she may meet the criteria for service connection under this regulation.

The Board also denied service connection for GERD on a direct basis. Its decision, however, fails to comply with the applicable law and relies on an inadequate medical opinion. The Board also denied secondary service connection based on the conclusions of the 2014 VA examiner. However, a review of the examiner's opinion fails to establish that the examiner properly addressed the issue of aggravation.

STANDARD OF REVIEW

A determination regarding entitlement to service connection is an issue of fact. *Hayes v. Brown*, 9 Vet. App. 67, 72 (1996). The Board's answer to this question is subject to review under the clearly erroneous standard. *Davis v. West*, 13 Vet.App. 178, 184 (1999). However, the Court reviews the Board's legal errors under the *de novo* standard, by which the Board's decision is not entitled to any deference. 38 U.S.C. § 7261(a)(1); see *Butts v. Brown*, 5 Vet.App. 532, 538 (1993) (*en banc*). The Court will set aside a conclusion of law made by the Board when such conclusion is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Butts*, 5 Vet.App. at 538. The interpretation of a statute or regulation is a question of law. *Lane v. Principi*, 339 F.3d 1331, 1339 (Fed. Cir. 2003). The Court's review of this interpretation is performed *de novo*. *Kent v. Principi*, 389 F.3d 1380, 1384 (Fed. Cir. 2004). The scope of the duty to assist is also a question of law. *Beasley v. Shinseki*, 709 F.3d 1154, 1157 (Fed. Cir. 2013). The Court should determine whether

the Board's decision, in which it misinterpreted the law, did not provide adequate reasons or bases, and did not mandate compliance with the duty to assist, was erroneous, without affording the Board any deference.

ARGUMENT

I. The Board misinterpreted 38 C.F.R. § 3.317 in determining that service connection for GERD could not be awarded under this regulation.

The Board concluded that under section 3.317, while service connection is provided for medically unexplained chronic multisymptom illnesses (MUCMI) that are without conclusive pathology or etiology, the regulation “specifically excludes ‘structural gastrointestinal diseases.’” R-6. It relied on the regulation’s definition of functional gastrointestinal diseases as one which is unexplained by structural, endoscopic, laboratory, or other objective signs of injury or disease related to the gastrointestinal tract. R-7. Because Ms. Atencio’s GERD was diagnosed by endoscopy and an upper GI series, it determined that her condition was not a “functional gastrointestinal disease[.]” *Id.* The Board’s conclusion rests on a misinterpretation of the regulation.

The Board’s decision rests on a conclusion that Ms. Atencio’s GERD must qualify as a functional gastrointestinal disease (FGID) in order to be awarded service connection under 38 C.F.R. § 3.317. R-7. This is too narrow an application and interpretation of the regulation. While the regulation does create a presumption of service connection for FGIDs, it does not preclude service connection for any other

gastrointestinal disease that would otherwise qualify as a MUCMI. This is supported by the Secretary's comments in the Federal Register. In response to public comment that presumptive service connection should be extended to GI disorders to include GERD or bowel inflammatory conditions, the Secretary clarified the scope of the rule. 76 FR 41696-01. He explained that GERD and IBD have been defined as structural gastrointestinal diseases by the NAD and that because the NAS committee concluded there was inadequate/insufficient evidence to determine whether an association exists between deployment in Southwest Asia during the Gulf War a presumption of service connection was not warranted. *Id.* However, the Secretary's comments also stated that "[T]his rulemaking is *limited* to clarifying the scope of the *presumption* for FGIDS as medically unexplained chronic multisymptom illnesses." *Id.* (emphasis added). Thus, the Secretary's comments did not exclude service connection for GERD or IBD under the regulation, rather, it excluded them from the presumption of entitlement as FGIDs.

Here, the Board failed to otherwise address whether Ms. Atencio's GERD was a MUCMI for which service connection could be established. This was prejudicial as the evidence suggests that the disorder may otherwise qualify. Under 38 C.F.R. § 3.317(a)(2)(ii) (2016): "the term medically unexplained chronic multisymptom illness means a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue,

pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities.”

The Board has acknowledged that there is a question as to the etiology of Ms. Atencio’s GERD. R-9. While the Board concluded that the evidence weighed against a favorable outcome in this case, it does not cite to any determinative evidence as to the etiology of Ms. Atencio’s GERD. R-11. Rather, a review of the medical evidence fails to provide this information, rather the VA examination the Board relied on rules out possible causes without explanation as to the etiology or cause. *See* R-173-82. Additionally, her symptoms include epigastric distress, R-178, a hiatus hernia, R-1423; R-321, esophageal erosion, R-1209, mildly thickened mucosal wall of the colon, R-239, and severe gastroesophageal reflux. R-227. She has also reported coughing and shortness of breath related to her GERD. R-537-38. She also has pain in the area of the xiphoid¹. R-538. Thus, Ms. Atencio’s conditions is marked by a variety of overlapping symptoms, an inconsistent demonstration of laboratory abnormalities, and is defined by a “cluster of signs and symptoms.” Further, Ms. Atencio has described shortness of breath, coughing, and pain which coincide with her GERD symptoms. R-297; R-449-57; R-537-38; R-703-04. These statements should be given greater weight by the Board in assessing whether her condition is best described as a

¹ The xiphoid is defined as the pointed process of cartilage, supported by a core of bone connected with the lower end of the sternum. *Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, Seventh Edition*. (2003). Retrieved December 21, 2016 from <http://medical-dictionary.thefreedictionary.com/proces>

MUCMI, consistent with VA's instructions in its adjudication manual. *See* VA M21-1, Part IV, Subpt. ii, Chap. D.2(c). ("When considering disabilities under the provisions of 38 C.F.R. § 3.317, a Veteran's lay statement describing his or her own symptoms of a qualifying disability takes on a greater importance than when considering other claims under direct SC principles.") (last accessed December 22, 2016).

The Board's misinterpretation of 38 C.F.R. § 3.317 was prejudicial as it failed to consider whether service connection was warranted under this regulation apart from the fact that Ms. Atencio's condition is not best characterized as a FGID. Simply because presumptive service connection is not established because the condition is not a FGID does not preclude service connection based on the facts of this case and the general provisions of section 3.317. The evidence in this case suggests that her condition is best characterized as a MUCMI. The Board failed to address the relevant evidence and the applicable definition and explain why service connection was not appropriate apart from stating her condition was not a FGID. Accordingly, the Board's decision should be vacated and remanded so that it may properly adjudicate Ms. Atencio's claim consistent with the applicable law.

II. The Board denied service connection for GERD on a direct basis. However, its decision fails to properly apply the law and relies on an inadequate medical opinion.

The Board determined that the evidence weighed against direct service connection. R-10. Its reasons for doing so relied on the conclusions of the November 2014 VA examiner's opinion. *Id.* The Board and the examiner relied on

the lack of treatment in service, the delayed diagnosis of esophageal reflux until 1998, the lack of nexus opinion from other treatment records, and finally, his reference to medical literature as to nexus. R-9-10; R-173-78. The Board erred by relying on this medical opinion and otherwise failed to provide adequate reasons or bases to support its conclusion that the opinion was the most probative evidence of record as to direct service connection.

The lack of treatment or complaint in service is not negative evidence.

The 2014 VA examiner was asked to opine as to whether it was as likely as not Ms. Atencio's GERD began during service. R-174. In support of his negative opinion, the examiner cited the silence in the service medical records and lack of treatment for GERD until 1998 as evidence against in-service incurrence. The examiner's rationale fails to provide legally sufficient reasons for finding that Ms. Atencio's symptoms did not manifested until 1998.

At her Board hearing, Ms. Atencio testified that she recalled experiencing symptoms of GERD around 1993 or 1994. R-703. She explained that her symptoms started as a burning in her chest that "went on for a few years." *Id.* This was originally thought be indigestion and she was treated with Tums for a couple years. R-704. Later, she had to be taken to the emergency room due to irritation of the esophagus. *Id.* It was during this emergency visit that she had a scope done and was informed her esophagus was damaged. *Id.* She approximated that this was around 1997 and that she had surgery in 1998. R-705-06.

Ms. Atencio has explained that she was not aware that her symptoms which existed earlier in time GERD. R-703-05. Rather, she was not aware of the underlying disability until she was treated in 1997, but she was still aware with her previous symptoms. R-704. While the Board concluded Ms. Atencio's statements were not consistent with the record, it fails to explain why her lack of complaint of GERD *prior* to her diagnosis with the condition is evidence against her claim. R-8. While she denied gastrointestinal issues in 1993, this was the same time she began experiencing distress according to her testimony. *See* R-8; R-703. Additionally, she explained that she was informed her pain and discomfort was merely indigestion, thus, there is no reason provided to by the Board to explain why she would have continued to seek treatment or note this condition on a medical evaluation. *See* R-8.

The law is clear that the lack of contemporaneous records is not a basis to reject the probative value of lay testimony. *Buchanan v. Nicholson*, 451 F.3d 1331, 1337 (Fed. Cir. 2006). While the Board is free weigh the evidence of record, it must provide adequate reasons or bases for its conclusions. *See Caluza v. Brown*, 7 Vet.App. 498, 511 (1995) (“a VA adjudicator may properly consider internal consistency, facial plausibility, and consistency with other evidence submitted on behalf of the veteran.”); 38 U.S.C. § 7104(a). Here, the Board has failed to provide an adequate explanation as to why Ms. Atencio's statements are implausible or inconsistent, especially in light of the history of her complaints, treatment, and subsequent diagnosis. The Board's mistreatment of this evidence is prejudicial because the

evidence suggests that Ms. Atencio had possible symptoms of GERD that manifested only a couple of years from her separation from service. This evidence may be relevant to assessing whether her condition could have a direct relationship to service. The Board improperly rejected this evidence for lack of corroboration contrary to the law. *See Buchanan*, 451 F.3d at 1337. The examiner committed the same error, basing his opinion on the lack of medical records to support a finding of symptoms manifesting prior to the official diagnosis. *See Dalton v. Nicholson*, 21 Vet.App. 23, 40 (2007) (“Ipso fact, the medical examiner cannot rely on the absence of medical records corroborating that injury to conclude that there is no relationship between the appellant’s current disability and his military service.”).

The examiner failed to explain why the date of diagnosis was dispositive to nexus. The examiner cited to the lack of evidence of empirical treatment for GERD until 1998. R-175. He also cited the fact that there was no evidence of esophagitis or esophageal erosions until the endoscopy in January 1999. R-175. However, lacking from the opinion is an explanation as to why this information is dispositive to nexus.

The probative value of an examiner’s opinion lies in its analysis. In *Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008), the Court explained that “ a medical examination report must contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two.” It elaborated, “It is the factually accurate, fully articulated, sound reasoning for the conclusion, not the mere

fact that the claims file was reviewed, that contributes probative value to a medical opinion.” *Id.* at 304. Here, the examiner provided no explanation as to why the date of the Veteran’s diagnosis ruled out a positive nexus determination. R-175. Without such an explanation the Board is left to rely on its own medical judgment to fill any gaps in the opinion. *Steffl v. Nicholson*, 21 Vet.App. 120, 124 (2007); *see also Colvin v. Derwinski*, 1 Vet.App. 171, 175 (1991).

The lack of favorable nexus opinions from earlier treatment providers is irrelevant. The examiner also cited to the fact that no prior treatment provider provided a positive nexus opinion as a basis to support her negative opinion. R-174-75. However, the examiner provides no explanation as to why such evidence would be expected to be in these reports. Again, without explanation as to the principles applied the opinion lacks probative value. *See Nieves-Rodriguez*, 22 Vet.App. at 304.

The lack of explanation is especially relevant because it is not clear why treatment records would contain information as to cause or nexus. Ms. Atencio’s treatment providers who diagnosed her with GERD were not doing so with the focus of service connection in mind. *See e.g.* R-1648-53 (treatment records from 1998 to 1999 focusing on symptoms and treatment by private medical care provider). Without establishing a foundation to support a conclusion that such information should be expected in the medical records, the examiner’s opinion provides no context as to the significance of this finding. Further, the Board is precluded from presuming the significance of this evidence. *See Kabana v. Shinseki*, 24 Vet.App. 428,

441 (2011) (holding that the Board is not permitted to rely on its own medical inference as to whether a particular injury would be documented in medical records).

The VA examiner’s statement that there is “insufficient evidence to determine whether an association exists between deployment to the Gulf War and structural gastrointestinal diseases” does not address the facts of this case.

The VA examiner ruled out direct service connection based on the lack of statistical correlation in the medical literature. R-175. However, this conclusion is not sufficient to adjudicate Ms. Atencio’s claim.

In *Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007), a claimant seeking service connection for a sinus condition received a VA medical opinion where the expert concluded that the disability was not due to herbicide exposure since it was not a condition for which causation was presumed to be the result of herbicide exposure. On appeal, the Court found this opinion to be inadequate because the expert should have explained whether it was at least as likely as not that the claimant’s herbicide exposure caused his sinus disorder. *Id.* at 124.

Later, in *Polovick v. Shinseki*, 23 Vet.App. 48, 55 (2009), the Board accepted a medical opinion in which the authoring physicians found a claimant’s brain tumor was not related to his active service solely because the National Academy of Sciences did not list it with those conditions for which it established herbicide exposure as a cause. On appeal, the Court found the Board erred in relying on this opinion to deny service connection for the brain tumor. *Polovick*, 23 Vet.App. at 55.

More recently, in *Wise v. Shinseki*, 26 Vet.App. 517, 531 (2014), the Board relied on an examination where the expert simply used the fact that PTSD is not something generally accepted in the medical community as a risk factor for cardiovascular disease to find it unrelated to the claimant's service. On appeal, the Court held that this not a sufficient basis for finding that no service connection exists since a claimant is entitled to the benefit of the doubt as to whether a disability is related to service. *Id.* at 532.

The examiner's determination is in contravention of *Steffl* and *Polovick* because he relied on fact that the National Academy of Sciences did not find sufficient evidence to conclude that structural gastrointestinal disorders should be presumed to be due to Gulf War service. *See* R-175; 76 FR 41696-01. The examiner took that conclusion to mean that there likely is no link between the appellant's service in Southwest Asia and his disorder. "[I]nadequate/insufficient evidence," however, is a term of art that the IOM committee uses to convey its level of certainty about an association between diseases and temporally and geographically limited foreign service. IOM² report at 5. It means that "available studies are of insufficient quality, validity, consistency, or statistical power to *permit a conclusion* regarding the presence or absence of an association." *Id.* (emphasis added). In other words, the IOM committee was unable, based on current medical literature, to form an opinion about whether structural gastrointestinal disorders are linked to Gulf War service. The

² VA provides a link to the IOM report on its website. [www.publichealth.va.gov/exposures/gulfwar/reports/ 2 health-and-medicine-division.asp](http://www.publichealth.va.gov/exposures/gulfwar/reports/2%20health-and-medicine-division.asp) (last visited December 21, 2016).

examiner's conclusion that there is "less likely than not" a link between the appellant's disorders and her deployment to the Gulf War does not comport with the IOM findings.

Rather, the examiner is tasked with considering the specific facts of this case. Here, while the examiner challenged that the favorable treatment record from Dr. Harris "was not supported by any evidence," he fails to acknowledge that the doctor based her opinion on the actual facts related to Ms. Atencio. *See* R-1378. Dr. Harris's opinion provided conclude that the noted burns to her esophagus likely occurred as result of chemical exposure in Saudi Arabia. *Id.* This opinion does not "lack support" merely because the statistical analysis found the IOM report does not establish a link for *all* veterans who served in the same geographic locations. The examiner's comparison of the two "opinions" are like comparing apples to oranges, one does not preclude the other from being true.

Because the Board relied on the 2014 VA examiner's conclusions, which was inadequate, its decision lacks support as well. The Board merely echoed the VA examiner's reasons for rejecting the favorable opinion of Dr. Harris. R-10. However, even if the opinion of Dr. Harris was deemed inadequate as well, this does not render the 2014 examiner's opinion any more probative on the issue of direct service connection. Thus, the Board erred when it relied on an inadequate VA examination to deny direct service connection.

III. The 2014 VA examination report the Board relied on does not adequately address the issue of aggravation.

In its decision, the Board elaborated on how the evidence clearly supported the Veteran's claims and that her ailments were manifested in an order of sinusitis first then heartburn. R-10. The Board then went on to cite the VA examiner's conclusion that medical literature does not show that "chronic or recurrent sinusitis commonly result[ed] in or aggravat[ed] a condition of GERD." R-10. In support of the conclusion that the service-connected sinusitis did not aggravate her GERD, the VA examiner noted how Ms. Atencio did not have any improvement in her sinus or asthma symptoms following surgical treatment of her GERD. R-10; R-175. The Board then detailed why there is not substantial evidence to support the conclusion that Ms. Atencio's GERD was due to her service-connected sinusitis. R-10-11. The Board's analysis, like the VA examination report, fails to adequately address the issue of aggravation.

In its decision in *El-Amin v. Shinseki*, 26 Vet.App. 136, 140 (2013), the Court found a medical opinion was inadequate where the examiner focused on direct causation and attributed the cause of the claimed condition to other factors. The lack of specific rationale left the Court uncertain as to how the Board could have interpreted the examiner's statements as having considered aggravation. *Id.* The same error is present in this case.

While the examiner provided a conclusory statement that the “medical literature” does not show that “chronic or recurrent sinusitis commonly results in or aggravates a condition of GERD,” R-175, the examiner’s entire rationale does not support the conclusion as to aggravation. For example, under the heading “literature review” the examiner cited a report that addressed that the two conditions may co-exist without a causal relationship. R-175. However, the literature provided by the examiner does not address aggravation in any way. Further, the examiner referenced the chronology of the development of each condition and the fact that her sinusitis did not improve following her surgery for GERD. *Id.* However, it is entirely unclear how this evidence suggests that Ms. Atencio’s sinusitis did not act to aggravate her GERD. The timing of the development of the conditions does not provide any significance, and the VA examiner provides no explanation to provide any further insight as to why it is relevant to this inquiry. Similarly, the discussion of her sinusitis not improving following treatment for GERD, at best, seems to invert the relevant inquiry.

Just as in *El-Amin*, it is unclear from the examiner’s opinion and provided rationale how the Board could interpret the opinion as truly encompassing the issue of aggravation. 26 Vet.App. at 140. The only portion of the opinion which implicates aggravation does not do so in the appropriate context, as the inquiry is not whether Ms. Atencio’s GERD affected her sinusitis but rather the inverse. The examination report lacks sufficient information to properly adjudicate this issue. *See Nieves-*

Rodriguez, 22 Vet.App. at 301, 304. Thus, the Board erred in relying on this opinion to deny secondary service connection.

CONCLUSION

The Board's decision was erroneous as a matter of law. The Board also misinterpreted the Gulf War presumptions and failed to consider all of the relevant evidence. The Board also relied on a manifestly inadequate examination without explaining how it could do so or why a new examination was not required. Accordingly, Ms. Atencio respectfully requests the Court to remand her case back to the Board with instructions for it to reconsider entitlement to service connection for GERD based upon a correct interpretation of all of the material law and evidence and following VA compliance with its duty to assist her in the development of her claim.

Respectfully Submitted,
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