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

No. 15-2926

JAMES L. SANDERS, APPELLANT,

v.

ROBERT D. SNYDER,  
ACTING SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before LANCE, *Judge*.

**MEMORANDUM DECISION**

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

LANCE, *Judge*: The appellant, James L. Sanders, served in the U.S. Army from January 1967 to December 1968, including service in the Republic of Vietnam, and is the recipient of, inter alia, a Purple Heart and Bronze Star Medal. Record (R.) at 701. He appeals, through counsel, a June 23, 2015, Board of Veterans' Appeals (Board) decision that, in part, denied entitlement to a disability rating in excess of 50% for post-traumatic stress disorder (PTSD) and determined that the issue of entitlement to a total disability rating based upon individual unemployability (TDIU) was not in appellate status. R. at 1-18. Single-judge disposition is appropriate. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). This appeal is timely, and the Court has jurisdiction over the case pursuant to 38 U.S.C. §§ 7252(a) and 7266. For the reasons that follow, the Court will vacate those parts of the June 23, 2015, decision denying entitlement to a disability rating in excess of 50% for PTSD and finding that the issue of entitlement to TDIU was not in appellate status and remand those matters for further proceedings consistent with this decision.<sup>1</sup>

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<sup>1</sup> The Court lacks jurisdiction over the appellant's claims for entitlement to service connection for bilateral hearing loss and a disability rating in excess of 10% for a shell fragment wound of the right lumbar area, which the Board remanded, and they will not be addressed further. *See* 38 U.S.C. §§ 7252(a), 7266(a); *Howard v. Gober*, 220 F.3d 1341, 1344 (Fed. Cir. 2000).

With respect to his PTSD claim, the appellant argues that the Board failed to provide an adequate statement of reasons or bases to support its determination that he was not entitled to an initial rating greater than 50%. Appellant's Brief (Br.) at 11-15; Reply Br. at 1-5. He asserts, *inter alia*, that the Board "dismissed the significance of [his] reported hallucinations" and did "not explain why such severe symptoms did not more nearly approximate the severity reflected by a 70[%] rating." Appellant's Br. at 14. In its decision, the Board acknowledged that the appellant reported hallucinations during a February 2010 VA medical examination and an April 2013 hearing. R. at 12. The Board explained that hallucinations are part of the criteria for a 100% disability rating and concluded that "the weight of the evidence does not show that the [appellant]'s symptoms result in total occupational and social impairment." *Id.* The Board concluded that "the 50[%] disability evaluation accounts for the [appellant]'s social and occupational impairment, as caused by all of his symptoms." *Id.*

The Court agrees with the appellant that the Board erred by failing to discuss whether evidence of hallucinations warranted a 70% disability rating, in light of the severity, frequency, or duration of that symptom. *See Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 118 (Fed. Cir. 2013); *Mauerhan v. Principi*, 16 Vet.App. 436, 442 (2002) (holding that listed symptoms are not exhaustive but serve instead "as examples of the type and degree of the symptoms, and their effects, that would justify a particular rating"). Absent a discussion or analysis of the appellant's hallucinations and whether he is entitled to a higher disability rating, the Court cannot understand the precise basis for the Board's denial of a higher rating for the appellant's PTSD, and the Court's review of this matter is frustrated. *See Thompson v. Gober*, 14 Vet.App. 187, 188 (2000) (holding that the Board must provide an adequate statement of reasons or bases "for its rejection of any material evidence favorable to the claimant"). Accordingly, the Court holds that the Board failed to provide an adequate statement of reasons or bases, and it will vacate and remand the Board's decision as to this matter. *See* 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1997); *see also Tucker v. West*, 11 Vet.App. 369, 374 (1998) (holding that remand is the appropriate remedy "where the Board has . . . failed to provide an adequate statement of reasons or bases for its determinations").

Turning to whether the Board erred when it found that the issue of entitlement to TDIU was not in appellate status, the appellant argues that the Board clearly erred when it referred entitlement to TDIU rather than adjudicating it as a part of the PTSD claim on appeal or, alternatively,

remanding it as part of his shell fragment wound claim. Appellant's Br. at 15-20. The Court holds that the Board again provided an inadequate statement of reasons or bases, frustrating the Court's review and requiring remand. *See* 38 U.S.C. § 7104(d)(1); *Allday*, 7 Vet.App. at 527.

The issue of entitlement to TDIU, "whether expressly raised by a veteran or reasonably raised by the record," is "part of the initial adjudication of a claim or . . . part of a claim for increased compensation." *Rice v. Shinseki*, 22 Vet.App. 447, 453 (2009). The Secretary may, however, bifurcate a claim, and an appellant must then specifically appeal each bifurcated issue. *See Tyrues v. Shinseki*, 23 Vet.App. 166, 176 (2009) (en banc), *aff'd on other grounds*, 631 F.3d 1380 (Fed. Cir. 2011), *vacated and remanded for reconsideration*, 132 S. Ct. 75 (2011), *modified*, 26 Vet.App. 31 (2012) (en banc), *aff'd*, 732 F.3d 1351 (Fed. Cir. 2013).

In the present case, neither the Board nor the parties address three documents in the record of proceedings (ROP) that appear to be pertinent to whether the issue of entitlement to TDIU was part of either the appellant's PTSD or shell fragment wound claims or whether that issue had been bifurcated from those claims.<sup>2</sup> Specifically, although an October 2013 Board decision states that "[e]ntitlement to TDIU was denied in December 2011," R. at 391, the December 2011 determination is not in the ROP nor discussed in the decision on appeal, and the Court is unable to determine the basis for that denial. *See* R. at 1-18. Similarly, the Board and the parties fail to discuss April 2012 and January 2013 rating decisions each noting, contradictorily, that TDIU was both deferred and denied. R. at 669-70 (April 2012 rating decision), 451-52 (January 2013 rating decision). As the Board does not address this evidence or discuss these discrepancies, the Court is unable to effectively review its determination that the issue of entitlement to TDIU was not in appellate status, and the Board's statement of reasons or bases is therefore deficient. The Court will, accordingly, vacate the Board's determination that TDIU was not in appellate status and remand the matter for the Board to address this evidence and resolve the matter. *See Tucker*, 11 Vet.App. at 374.

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<sup>2</sup> The Court is troubled by the quality of the parties' briefs regarding this issue, as neither party provided an accurate procedural history of the issue of entitlement to TDIU, thus failing to ensure that all relevant documents were included in the ROP. *Cf.* U.S. VET. APP. R. 28.1(a)(1) (requiring the ROP to include "any document . . . cited in a brief" and "any other documents . . . that are relevant to the issues . . . on appeal"). The Court cautions counsel for both parties to exercise proper diligence in the future. *See* Model Rules of Prof'l Conduct 1.1 (Competence), 1.3 (Diligence); U.S. VET. APP. R. ADM & PRAC. 4(a) (adopting the Model Rules of Professional Conduct as the disciplinary standard of the Court).

Given this outcome, the Court need not address the appellant's remaining arguments. *See Quirin v. Shinseki*, 22 Vet.App. 390, 396 (2009) (holding that "the Court will not ordinarily consider additional allegations of error that have been rendered moot by the Court's opinion or that would require the Court to issue an advisory opinion"). On remand, the appellant is free to submit additional evidence and argument, including the arguments raised in his briefs 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 (requiring the Secretary to provide for "expeditious treatment" of claims remanded by the Board or the Court).

After consideration of the parties' briefs, and a review of the record, the Board's June 23, 2015, decision is VACATED as it pertains to PTSD and TDIU and the matters are REMANDED to the Board for further proceedings consistent with this decision.

DATED: January 30, 2017

Copies to:

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