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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 15-3317

ROBERT S. JONES, APPELLANT,

v.

DAVID J. SHULKIN, M.D.,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before PIETSCH, *Judge*.

MEMORANDUM DECISION

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

PIETSCH, *Judge*: The appellant, Robert S. Jones, appeals through counsel a July 22, 2015, decision of the Board of Veterans' Appeals (Board) that denied entitlement to an initial evaluation in excess of 30% for post-traumatic stress disorder (PTSD) with alcohol abuse/dependence prior to December 6, 2012, and in excess of 70% thereafter. Record (R.) at 3-14. This appeal is timely, and the Court has jurisdiction pursuant to 38 U.S.C. § 7252(a). Both parties submitted briefs and the appellant submitted a reply brief. A single judge may conduct this review. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons set forth below, the Court will vacate the Board's decision and remand it for further proceedings consistent with this decision.

I. FACTS

Mr. Jones served on active duty in the U.S. Army from May 1966 to May 1968. R. at 882. In March 2005, a private examiner diagnosed chronic PTSD, and assigned a global assessment of functioning (GAF) score of 40. R. at 369. The psychiatrist opined that, because of his symptoms, Mr. Jones "is unable to sustain social relationships and [is] moderately comprised in his ability to sustain work relationships." R. at 370.

In a July 2009 decision, the Board granted service connection for PTSD. R. at 224-235. Later that same month, the regional office (RO) implemented the grant and assigned a 30% disability rating. R. at 205. In August 2009, Mr. Jones filed a Notice of Disagreement (NOD). R. at 200-203. A Statement of the Case (SOC) was issued in May 2010, R. at 175-188, and Mr. Jones perfected his appeal later that same month, R. at 174.

In June 2010, Mr. Jones underwent a VA examination. R. at 164-171. Mr. Jones reported that he had been married to his second wife since 1993 and that they got along. R. at 166. He also said he saw his children and grandchildren occasionally, and he stated that he did not maintain any friendships but preferred his own space. *Id.* Mr. Jones also reported nightmares once every one to two weeks, R. at 168, and he stated that he decided to retire because his job "was stressful," R. at 170. The examiner noted that Mr. Jones's appearance was clean and that he was neatly groomed, and he stated that Mr. Jones "reported mild symptoms and generally sees himself as 'doing all right.'" R. at 168, 172. *Id.* The examiner reported that Mr. Jones's mood was mild, his thought process and content were unremarkable, and he was oriented to person, place, and time. R. at 167. The examiner assigned a GAF score of 62. R. at 171.

The RO issued a Supplemental SOC (SSOC) in September 2010. R. at 149-61. A January 2012 VA treatment note documents that Mr. Jones felt he didn't need substance abuse treatment because the quantity of alcohol he was drinking (a half-gallon of moonshine per week) wasn't excessive. R. at 822. However, the examiner opined that it was not likely Mr. Jones would improve substantially while he is still consuming that much alcohol. *Id.* In August 2012, the Board remanded the claim for additional development. R. at 137.

In December 2012, Mr. Jones underwent another VA examination. R. at 102-18. The examiner diagnosed chronic, moderate PTSD and alcohol dependence. R. at 108. The examiner noted that Mr. Jones's medical records presented a significant and longstanding history of high-grain, homemade alcohol abuse/dependence. R. at 105. By Mr. Jones's own admission, his alcohol abuse/dependence problem had been present since the early 1990s. *Id.* However, the examiner found that this comorbid and complicating condition was not noted during Mr. Jones's last VA examination in June 2010 or during any of his prior community-based psychiatric evaluations with Dr. Edwin Hoeper. *Id.* The examiner noted that significant alcohol abuse/dependence, as seen in Mr. Jones's

case, more likely than not "would have a significant effect on job-related performance, particularly if, as the veteran conceded, daytime alcohol use frequently occurred." R. at 106. He also noted Mr. Jones's recent marital separation and isolation from others, and reported Mr. Jones's PTSD was of moderate severity. R. at 106. He noted that Mr. Jones's alcohol use should have been accounted for in prior GAF scores but was not, R. at 105-106, and he assigned a GAF score of 55 that reflected the combination of PTSD and alcohol abuse/dependence, which he found could not be reasonably disentangled. R. at 106, 110. The examiner noted the following symptoms: marital dysfunction and interpersonal difficulties; social isolation; chronic substance abuse/dependence; chronic mental illness; PTSD symptoms of irritability, depressed mood, anxiety, chronic sleep impairment, suspiciousness, and difficulty adapting to stressful circumstances; alcohol abuse/dependence symptoms (which could not be disentangled from the PTSD diagnosis) of mild memory loss, tremor/mild ataxia, social disinhibition, impaired impulse control, and circumstantial speech; and shared symptoms of difficulty concentrating, irritability, and difficulty establishing and maintaining effective work and social relationships. R. at 109-10.

During that same month, Mr. Jones was receiving treatment from the Vet Center. R. at 59-62. He reported that his memory and ability to concentrate were "not very good." R. at 61. When asked what he does for fun, he responded, "nothing. I have not had fun in a long time." *Id.* He reported a tendency to isolate, keeping things to himself emotionally, and remaining hypervigilant. *Id.* He viewed his future as "grim." *Id.* He also reported that he stopped working because of increasing conflicts with people on the job and he did not want to get fired. R. at 62.

In February 2013, VA asked the December 2012 VA examiner to provide a medical opinion as to whether Mr. Jones's diagnosed alcohol dependence was caused by or related to his service-connected PTSD. R. at 55-57. The examiner opined that the co-morbid PTSD and alcohol abuse/dependence were at least as likely as not related. R. at 53. He opined that Mr. Jones's substance abuse was at least as likely as not "a result of the veteran 'self-medicating' his PTSD-related anxiety prior to any formal psychiatric treatment." *Id.* The examiner further opined that Mr. Jones's alcohol addiction was now "self-perpetuating, even though the basis for the problem was started by his PTSD." *Id.* In terms of impairment, the examiner stated:

Significant alcohol abuse/dependence, as seen in the veteran's [case], more likely than not will have adverse effects on social/occupational functioning and should have been accounted for in prior GAF scores. The veteran's current GAF, as provided in the concurrent/accompanying C&P (Compensation and Pension) Review PTSD evaluation, reflects this combination of PTSD and Alcohol Abuse/Dependence, which unfortunately cannot be reasonably disentangled without resorting to mere speculation.

Id. A GAF of 55 was assigned. R. at 54.

A February 2013 rating decision granted an increased rating from 30% to 70%, effective from December 6, 2012. R. at 36. Also at that time, the RO issued an SSOC denying an initial evaluation in excess of 30% and an increased evaluation in excess of 70% after December 6, 2012. R. at 39-51.

In March 2013, Mr. Jones submitted a statement noting that his treating psychiatrist had endorsed "major to serious" impairment dating back to at least March 2005. R. at 21. He argued that the correct effective date for his re-opened claim should be the date of reopening, which was May 2, 2007. *Id.* Along with that statement, Mr. Jones submitted a formal application for a total disability rating based on individual unemployability (TDIU). R. at 22-23. He listed PTSD as the condition that prevented him from securing or following any substantially gainful occupation, R. at 22, and he stated that "[b]ecause of my service-connected disability, I am no longer able to work," R. at 23.

A June 2013 treatment note documents that Mr. Jones had separated from his wife and was unsure whether she may have ended the marriage. R. at 701. He reported that he was living alone and was unable to describe his daily activities beyond stating, "I do what I do. Sometimes I do nothing." *Id.* He reported no social contacts and stated that he had no friends and communicated with his mother, sister, and children only rarely. *Id.* He stated that he kept his son at a distance because he felt the son had a tendency to take advantage of him. *Id.* He noted that he had made a few friends at the Vet Center, whom he was in contact with occasionally but not recently. *Id.* Overall, he described his situation as "depressing" and alluded to having a low mood. *Id.* The treatment provider found that Mr. Jones had an anxious affect and looked uncomfortable, guarded, and mildly irritable. R. at 702. He suspected Mr. Jones to have poverty of thought processes versus evasiveness. R. at 703. He noted that Mr. Jones was sometimes tangential, that his cognition appeared impaired at times, his insight was limited, and his judgment was fair to poor. *Id.* A GAF of 50 was assigned and the examiner suspected Mr. Jones was "minimizing his alcohol use." *Id.*

Treatment notes from June 2014 show Mr. Jones and his wife were still living apart but had a "friendship." R. at 1003. Mr. Jones stated that he loved his wife but was unsure they could live together and reported "much ambivalence about the relationship." *Id.* He continued to be vague about his level of alcohol use. *Id.*

Mr. Jones underwent another VA examination in March 2015. R. at 520-35. Mr. Jones endorsed a "constellation of intrusion symptoms, avoidance symptoms, negative alterations in cognitions and mood, and marked alterations in arousal and reactivity—each linked to his in-service traumatic experiences." R. at 521. Mr. Jones also confirmed a history of excessive alcohol use in a "partial attempt to self-medicate his PTSD symptoms." *Id.* The examiner found Mr. Jones's symptoms to be "moderate to severe and result in some difficulty in daily functioning, but he is generally functioning reasonably well and has some meaningful relationships." *Id.* The examiner provided examples such as, a "fair to good relationship with his mother, sister, wife and children." *Id.* Although he reported enjoyment from a peer support group, R. at 521, Mr. Jones denied having "notable friendships." R. at 524. He stated that through the years he had separated himself from everybody and that he was "generally detached from other people and to have difficulty bonding with people." R. at 524, 526.

The examiner found "notable functional impairments including difficulty concentrating, impaired memory, irritability and related difficulty getting along with other people, decreased motivation and mood," with each of these impairments exacerbated by the consumption of alcohol. R. at 526. The examiner indicated Mr. Jones suffered from the following symptoms: recurrent, involuntary, and intrusive distressing memories; recurrent distressing dreams; avoidance behaviors; persistent and exaggerated negative beliefs or expectations; markedly diminished interest or participation in significant activities; feelings of detachment or estrangement from others; irritable behavior and angry outbursts (with little or no provocation) typically expressed as verbal or physical aggression toward people or objects; hypervigilance; exaggerated startle response; problems with concentration; depressed mood; anxiety; suspiciousness; chronic sleep impairment; mild memory loss; flattened affect; circumstantial, circumlocutory, or stereotyped speech; difficulty establishing and maintaining effective work and social relationships; difficulty adapting to stressful circumstances, including work or a work-like setting. R. at 531-32. Finally, the examiner indicated

that Mr. Jones suffered from "[o]ccupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily, with normal routine behavior, self-care and conversation." R. at 522.

An April 2015 rating decision continued the 70% rating, denied an initial rating in excess of 30% prior to December 2012, and denied entitlement to TDIU. R. at 563-569. Thereafter, the Board issued the decision here on appeal. R. at 3-14.

II. ANALYSIS

A. Entitlement to Higher Ratings for PTSD

The appellant contends that the Board failed to provide adequate reasons or bases for its decision because it merely listed some relevant evidence without discussion or analysis of the frequency, severity, and duration of all of his symptoms and the resulting occupational and social impairment indicated by that evidence. Appellant's Brief (App. Br.) at 12-20.

PTSD is evaluated under the general rating criteria for mental disorders found at 38 C.F.R. § 4.130, Diagnostic Code (DC) 9411 (2016). In evaluating mental disorders such as PTSD, the Board must consider all the evidence of record, determine the nature of the appellant's overall disability picture, and then look to the list of symptoms outlined in the diagnostic criteria as examples that can provide guidance in determining the severity of the appellant's condition. *Mauerhan v. Principi*, 16 Vet.App. 436, 442 (2002). Under DC 9411, a 50% disability rating is warranted when a claimant's mental disorder results in

[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.

38 C.F.R. § 4.130, DC 9411. A 70% disability rating is warranted when a claimant's mental disorder results in

[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 (including work or a worklike setting); inability to establish and maintain effective relationships[.]

Id. Pursuant to a VA regulation, "where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria for that rating. Otherwise, the lower rating will be assigned." 38 C.F.R. § 4.7 (2016).

In *Vazquez-Claudio v. Shinseki*, the Federal Circuit held that assignment of disability ratings under DC 9411 requires a two-part analysis of (1) an "initial assessment of the symptoms displayed [. . .] and if they are the kind enumerated in the regulation," and (2) "an assessment of whether those symptoms result in occupational and social impairment." 713 F.3d 112, 117-18 (Fed. Cir. 2013). In *Mauerhan*, the Court held that the symptoms listed in DC 9411 are "not intended to constitute an exhaustive list, but rather are to serve as examples of the type and degree of symptoms, or their effects, that would justify a particular rating." 16 Vet.App. at 442. The Board is required to "consider all symptoms of a claimant's condition that affect the level of occupational and social impairment," not just those listed in the regulation. *Id.* at 443.

Thus, when determining the appropriate disability evaluation to assign, the veteran's symptoms are the Board's "primary consideration." *Vazquez-Claudio*, 713 F.3d at 118. However, "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." *Id.* at 117. "The regulation's plain language highlights its symptom-driven nature" and "symptomatology should be the fact-finder's primary focus when deciding entitlement to a given disability rating." *Id.* at 116-17.

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); *Johnston v. Brown*, 10 Vet.App. 80, 84 (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 with any finding on a material issue of fact or law presented on the record, the Board must support its determination of the appropriate degree of disability with an adequate statement of reasons or bases that enables the claimant to understand the precise basis for that finding and facilitates review in this Court. 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995); *Simon v. Derwinski*, 2 Vet.App. 621, 622 (1992); *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 it finds to be 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); *Gabrielson v. Brown*, 7 Vet.App. 36, 39-40 (1994); *Gilbert*, 1 Vet.App. at 57.

Regarding the rating period prior to December 2012, the appellant notes that the December 2012 examiner found that the providers who previously assigned GAF scores and the June 2010 examiner did "not account[] for his comorbid condition of alcohol abuse/dependence" when making their assessments and that, had they done so, the examiner and providers would have found a more serious disability picture than reported. App. Br. at 15-16; *see* R. at 105-06. He then argues that, although the Board acknowledged that the June 2010 examiner did not address or take into account the appellant's alcohol abuse that is secondary to his PTSD, the Board then summarily concluded, without further analysis or discussion, that "overall" his symptoms were more in keeping with a 30% rating during this time. R. at 11; *see* App. Br. at 16.

The Court agrees with the appellant's argument in this regard. The Board noted the June 2010 VA examiner's findings that the appellant had a GAF score of 62, was married to his second wife of 17 years, and saw his children and grandchildren occasionally. *Id.* The Board further noted that the June 2010 VA examiner only noted symptoms commensurate with a 10% rating, and it stated "although some of the appellant's symptoms are not specifically enumerated in the [30% rating] criteria, including his abuse of alcohol secondary to his PTSD," based upon his overall mental health picture a 30% rating was appropriate. R. at 11. However, as the appellant asserts, the Board did not provide any explanation whatsoever as to why the appellant's symptoms "not specifically

enumerated" in the 30% rating criteria and, most significantly, his established PTSD-related alcohol abuse, did not warranted a higher rating. This lack of discussion is especially egregious given that the December 2012 examiner explicitly highlighted the fact that the December 2010 VA examination report was lacking due to its failure to consider the appellant's PTSD-related alcohol abuse.

Further, as the appellant also argues, the Board failed to take into consideration or, in certain instances, even note the existence of, many pieces of favorable and relevant evidence when making its rating determinations and provided no analysis or discussion regarding the rejection of this evidence. *See* R. at 117 (December 2012 examiner's endorsement of passive homicidal ideation, particularly when frustrated and irritable); R. at 166 (June 2010 examiner's report that the appellant had problems with memory and concentration and did not maintain any friendships because it would get him into trouble and he preferred his own space); R. at 169-70 (June 2010 examiner's report that the appellant demonstrated irritability or outbursts of anger and decided to retire from a job he worked at for several years due to stress and no longer wanting to deal with coworkers); R. at 701 (June 2013 treatment note indicating that the appellant had separated from his wife and was unsure if she had ended the marriage, was alone, did nothing, and had little to no social contacts, friends, and rare communication with others, including his family).

Although the Board is not required to discuss every piece of evidence in the record, it is required to account for all materially favorable evidence and provide the reasons for its rejection. *See Caluza*, 7 Vet.App. at 506. The Board did not explain how the appellant's PTSD symptoms described above were not commensurate with the rating criteria symptoms such as memory impairment, disturbances of motivation and mood, difficulty in establishing and maintaining effective work and social relationships, impaired impulse control, or difficulty adapting to stressful circumstances, including work. *See Vazquez-Claudio*, 713 F.3d at 118 (requiring the Board to explain whether the symptoms a veteran experiences are of the type enumerated within the higher rating criteria). Likewise, the Board provided no explanation for these symptoms and why they did not result in reduced reliability and productivity. *Id.* (requiring the Board to explain whether those symptoms result in occupational and social impairment commensurate with a higher rating).

Therefore, remand for the Board to provide an adequate explanation of its reasons or bases regarding the above is appropriate. *See Tucker v. West*, 11 Vet.App. 369, 374 (1998) (remand is

appropriate "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"). On remand, the Board must address the appellant's complete symptomatology as described above and render the requisite two-part analysis required under *Vazquez-Claudio*, 713 F.3d at 118. The Board must also consider, as the appellant points out, whether a higher rating for all or part of this rating period is warranted, based upon the finding of the December 2012 examiner that the June 2010 VA examination was inaccurate due to its failure to address the appellant's alcohol abuse, his assignment of a GAF score of 55 "over the most recent [one] year period," and his finding that the duration of the symptoms described was more than one month. R. at 109, 115. See *McGrath v. Gober*, 14 Vet.App. 28, 35 (2000) (finding that the Board erred in failing to consider and address the June 1992 VA examiner's statement that the veteran had been suffering from PTSD since 1972 and holding that "the date the evidence is submitted or received is irrelevant when considering the effective date of the award"); see also R. at 370 (March 2005 record from appellant's treating psychiatrist endorsing "major to serious" impairment due to diagnosed PTSD).

B. Entitlement to a Rating of TDIU

The Board determined that the record did not show that the appellant was unemployable solely to his service-connected PTSD and found that the issue of entitlement to TDIU was not reasonably raised by the record on appeal. R. at 13. The Board further noted that an April 2015 rating decision denied TDIU and that the appellant had not appealed the decision, and that three VA examiners indicated that the appellant's PTSD did not result in total occupational impairment. *Id.*

The appellant contends that the Board misinterpreted the law when it failed to properly consider whether the evidence of record raised the issue of entitlement to TDIU and "then essentially denied the Veteran entitlement to TDIU without determining whether the issue was properly developed." App. Br. at 20-27. He contends that the Board's "rationale conflated the issue of whether TDIU was raised, and whether the [appellant] was entitled to such a rating, and then failed to provide adequate reasons or bases for either of these determinations." *Id.* at 21-22.

The Secretary asserts that "the Board addressed entitlement to TDIU and determined that it was not currently in appellate status. R. at 13. It did not misinterpret the law where it determined that the issue was not reasonably raised." Secretary's Br. at 10.

The Court agrees with the appellant's argument and holds that the Board erred when it determined that the issue of TDIU was not currently in appellant status and was not reasonably raised by the record on appeal. When the appellant filed his August 2009 NOD in the current appeal, he was presumed to be seeking the maximum benefit allowed by law "and it follows that such a claim remains in controversy where less than the maximum available benefit is awarded." *AB v. Brown*, 6 Vet.App. 35, 38 (1993). When the issue of a TDIU arises in connection with an appeal of an increased rating claim, as here, it is not a separate claim, but is considered as part of the claim for increased compensation. *Rice v. Shinseki*, 22 Vet.App. 447, 452-54 (2009); *see Comer v. Peake*, 552 F.3d 1362, 1366 (Fed. Cir. 2009) (stating that VA must consider whether a TDIU is warranted whenever a pro se claimant seeks a higher disability rating and submits "cogent evidence of unemployability," regardless of whether the claimant specifically requests a TDIU).

Consequently, once the increased rating claim was in appellate status by virtue of the April 2008 NOD, the TDIU issue became part of that claim when it was subsequently raised by the record. *See Comer*, 552 F.3d at 1366; *Rice*, 22 Vet.App. at 452-54; *see also Robinson v. Peake*, 21 Vet.App. 545, 552-56 (2008), *aff'd sub nom. Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009) (holding that the Board has a duty to address all issues reasonably raised either by the appellant or by the record); 38 C.F.R. § 3.155(a) (2016) (To raise the issue of TDIU entitlement, the claimant must submit evidence of a medical disability, make a claim for the highest rating possible, and submit evidence of unemployability.).

Here, contrary to the Board's finding that "a claim for TDIU is not raised by the rating issue on appeal and no further action pursuant to *Rice* is necessary," R. at 13, the record shows that the appellant clearly submitted evidence of his unemployability. *See* R. at 22-24 (March 2013 application for TDIU benefits remarking that he is "no longer able to work" due to his PTSD disability and indicating he left his last job due to his PTSD disability), R. at 62 (VA treatment note that "veteran Jones' PTSD symptomatology continues to make it difficult for him to maintain substantial gainful activity"), R. at 1059-62 (December 2013 application for TDIU benefits indicating he left his last job due to his PTSD disability). In addition, a VA examiner opined:

While the veteran is currently retired and occupationally inactive, his psychiatric conditions (PTSD + Alcohol Abuse/Dependence) would have a significant effect on

job-related performance, particularly if, as the veteran conceded, that daytime alcohol use is a frequent occurrence.

R. at 106. Therefore, remand is appropriate for the Board to properly and adequately address the merits of the appellant's entitlement to TDIU based upon the record on appeal that reasonably raises the issue of entitlement to TDIU.

In pursuing the matter on remand, the appellant is free to submit additional evidence and argument on the remanded matter, and the Board is required to consider any such relevant evidence and argument. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002) (stating that, on remand, the Board must consider additional evidence and argument in assessing entitlement to the benefit sought); *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order). The Court has held that "[a] remand is meant to entail a critical examination of the justification for the decision." *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991). The Board must proceed expeditiously, in accordance with 38 U.S.C. § 7112 (requiring the Secretary to provide for "expeditious treatment" of claims remanded by the Court).

III. CONCLUSION

After consideration of the appellant's and Secretary's briefs, and a review of the record on appeal, the Board's July 22, 2015, decision is VACATED and the matter is REMANDED for further proceedings consistent with this decision.

DATED: February 24, 2017

Copies to:

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