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

No. 16-1608

ROOSEVELT CHANEY, APPELLANT,

v.

DAVID J. SHULKIN, M.D.,  
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, Roosevelt Chaney, served in the U.S. Army from September 1980 to September 1983. Record (R.) at 67. He appeals, through counsel, a February 1, 2016, Board of Veterans' Appeals (Board) decision that, in part, denied his claims for entitlement to service connection for a left foot disability and a left shoulder disability.<sup>1</sup> R. at 1-16. 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 that part of the February 1, 2016, decision denying entitlement to service connection for a left foot disability and remand that matter for further proceedings consistent with this decision. As the appellant presents no argument concerning the Board's denial of entitlement to service connection for a left shoulder disability, the Court holds that he has abandoned that matter and will, accordingly, dismiss the appeal as to that issue. *See Pederson v. McDonald*, 27 Vet.App. 276, 285 (2015) (en banc).

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<sup>1</sup> The Court lacks jurisdiction over the appellant's claim for entitlement to service connection for a lumbar spine disability, which the Board remanded, and it 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).

The appellant contends that the Board clearly erred when it determined that VA satisfied its duty to assist, including its finding that a May 2012 VA medical opinion was adequate for rating purposes, or that, in the alternative, the Board failed to provide an adequate statement of reasons or bases to support that determination. Appellant's Brief (Br.) at 5-12. Specifically, he argues that the examiner failed to provide an adequate supporting rationale for his conclusion that the appellant's current foot disability was not related to his service. *Id.* The Secretary disputes the appellant's contentions and asks the Court to affirm the Board's decision. Secretary's Br. at 5-11.

The Court agrees that the Board failed to provide an adequate statement of reasons or bases for its determination that VA satisfied its duty to assist. *See* 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995). In its decision, the Board relied on the May 2012 opinion to support its conclusion that the appellant's left foot disability was not related to service, based on the examiner's conclusion that "there were no medical records documenting a chronic left foot condition" in service or immediately after service. R. at 7 (discussing R. at 271-76, 286). The Board concluded that the May 2012 opinion "is probative and persuasive as to the etiology of the [appellant]'s left foot disability." R. at 7. The May 2012 opinion, in turn, states that the appellant's left foot condition is not related to his service, as there are "no civilian medical records pertaining to [a] chronic left foot condition in [the] immediate years after [the appellant] left active service." R. at 286 (capitalization removed).

The examiner's opinion relates to whether the appellant developed a chronic condition in service or in the period immediately following service for the purposes of establishing entitlement to service connection under the provisions of 38 C.F.R. § 3.303(b), which pertains to chronic diseases that develop in service or within a presumptive period following service. *See* 38 C.F.R. § 3.303(b) (2016). It does not, however, provide an opinion, supported by an adequate rationale, as to whether the appellant's current disability is otherwise related to his documented in-service foot injuries under the general principles of service connection. *See Davidson v. Shinseki*, 581 F.3d 1313, 1316 (Fed. Cir. 2009) (noting that establishing service connection generally requires medical or, in certain circumstances, lay evidence of (1) a current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a nexus between the claimed in-service disease or injury and the present disability); 38 C.F.R. § 3.303(a). Likewise, the Board does not discuss whether there is sufficient medical evidence of record regarding the issue of service connection on a direct, rather

than chronic, basis. *Cf. McLendon v. Nicholson*, 20 Vet.App. 79, 81 (2006) (holding that VA is required to provide a medical examination where there is, inter alia, "insufficient competent medical evidence . . . to make a decision on the claim"). Accordingly, the Court's review of the Board's determination that VA satisfied its duty to assist is frustrated, and the Board's statement of reasons or bases is inadequate. *See Allday*, 7 Vet.App. at 527. The Court will, therefore, vacate that part of the Board's decision denying the appellant's left foot claim and remand the matter.

On remand, the Board must discuss whether there is sufficient medical evidence to decide the issue of service connection on a direct basis and, if not, provide the appellant with a new examination. *See McLendon*, 20 Vet.App. at 81. 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, that part of the Board's February 1, 2016, decision denying entitlement to service connection for a left foot disability is VACATED, and that matter is REMANDED to the Board for further proceedings consistent with this decision. The appeal is otherwise DISMISSED.

DATED: March 10, 2017

Copies to:

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VA General Counsel (027)