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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 16-0141

STACEY C. CHAMBERS, APPELLANT,

v.

DAVID J. SHULKIN, M.D.,
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, Stacey C. Chambers, appeals through counsel that part of a December 4, 2015, Board of Veterans' Appeals (Board) decision that denied service connection for post-traumatic stress disorder (PTSD).¹ Record (R.) at 2-16. The appellant argues that the Board erred when it (1) provided an inadequate statement of reasons or bases for relying on inadequate medical examinations to conclude the appellant did not have PTSD and; (2) failed to comply with the duty to assist by relying on medical opinions previously deemed inadequate to excuse the deficiencies in an April 2014 VA examination. Appellant's Brief at 4-10. For the following reasons, the Court will vacate that part of the December 2015 Board decision on appeal and remand the matter 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 other specified relations such as their widows, is consistent with congressional intent as old as the Republic. *See Hayburn's Case*, 2 U.S. (2

¹The Board also remanded the issue of service connection for an acquired psychiatric disorder other than PTSD, to include anxiety and depression. This matter is not currently before the Court. *See Hampton v. Gober*, 10 Vet.App. 481, 482 (1997).

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).

From the beginning of the Republic statutory construction concerning congressional promises to veterans has been of great concern. "By the act concerning invalids, passed in June, 1794, vol. 3. p. 112, the secretary at war is ordered to place on the pension list, all persons whose names are contained in a report previously made by him to congress. If he should refuse to do so, would the wounded veteran be without remedy? Is it to be contended that where the law in precise terms, directs the performance of an act, in which an individual is interested, the law is incapable of securing obedience to its mandate? Is it on account of the character of the person against whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country?" *Marbury v. Madison*, 5 U.S. 137, 164, 2 L. Ed. 60, 69 (1803).

The appellant is a Persian Gulf War veteran who served on active duty in the U.S. Army from November 1989 to November 1993, as a medic. R. at 614 (DD Form 214). The appellant received the Combat Medical Badge. R. at 614. In July 2007, the appellant reported "flashback type" memories of the Iraq War, vivid memories of refugee camps, and the smell of burning human waste. R. at 581.

In March 2008, the appellant filed for benefits based on service connection for PTSD, depression and anxiety. R. at 596-603.

In May 2008, the appellant was provided with a VA PTSD examination. R. at 525-35. In December 2011, the Board remanded the appellant's psychiatric disorder claim for a new examination after finding that the May 2008 examiner did not have the opportunity to consider a complete record, including the appellant's relevant lay testimony. R. at 140.

In January 2012, the appellant underwent another VA mental disorders examination. R. at 119-25. In February 2014, the Board again remanded the appellant's claim for service connection because it found that the January 2012 examination lacked a rationale for the

conclusion provided and was "not adequate for adjudication purposes." R. at 183.

In April 2014, the appellant attended yet another VA examination. R. at 36-44. The examiner evaluated the appellant and provided diagnostic findings based on the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-V). R. at 36-44.

In December 2015, the Board issued a decision denying the appellant service connection for PTSD. R. at 2-12. In the decision, the Board noted that the appellant's claims are governed by the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV). R. at 7. The Board relied on results from both the May 2008 examination and the January 2012 examination to support its denial of service connection for PTSD without explanation. R. at 8-10. The Board also relied on the April 2014 examination. R. at 8-10. The Board found that despite using the DSM-V criteria, the April 2014 examiner's "conclusion reached was consistent with the conclusions of the two previous examiners under [the] DSM-IV." R. at 8. This appeal ensued.

As Lord Mansfield suggests, "[a]ll evidence is according to the subject-matter to which it is applied." *Mayor of Hull vs. Horner*, Cowp. Rep, 109 (Eng. 1774). The Court concludes that the Board failed to provide an adequate statement of reasons or bases for relying on the May 2008 and January 2012 VA examinations. *See 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 December 2011, the Board found the May 2008 examination inadequate because the examiner did not have the opportunity to consider a complete record, including relevant lay statements, before providing an opinion. R. at 140. Additionally, in February 2015, the Board found that the January 2012 VA examination was inadequate for adjudication purposes because the examiner failed to provide any rationale for the stated opinion. R. at 183. The Board, however, relied on both of these examinations in the decision on appeal without explaining this reliance.

The Court also concludes that the Board failed to provide an adequate statement of reasons or bases for relying on the April 2014 examination that was conducted pursuant to DSM-V. *See Gilbert, supra*. Although the Board acknowledged that the April 2014 examiner utilized the wrong version of the *Diagnostic and Statistical Manual of Mental Disorders*, the Board justified

its reliance on this examination by citing to the May 2008 and January 2012 examinations evidencing similar findings. R. at 8. Because the Board's reliance on these examinations was in error, the Board's treatment of the April 2014 examination is not adequately explained. *See Gilbert, supra*.

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). This matter is to be provided expeditious treatment on remand. *See* 38 U.S.C. § 7112; *see also Hayburn's Case*, 2 U.S. (2 Dall.) at 409, 410, n. ("[M]any unfortunate and meritorious [veterans], whom Congress have justly thought proper objects of immediate relief, may suffer great distress, even by short delay, and may be utterly ruined, by a long one.").

Based on the foregoing reasons that part of the December 4, 2015, Board decision on appeal is VACATED and the matter is REMANDED for readjudication.

DATED: March 20, 2017

Copies to:

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