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

NO. 16-0158

TROY L. HOLLIS, 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*: Troy L. Hollis appeals through counsel a December 3, 2015, Board of Veterans' Appeals (Board) decision that denied entitlement to a disability rating in excess of 50% for post-traumatic stress disorder (PTSD). This appeal is timely and the Court has jurisdiction to review the Board's decision pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). Single-judge disposition is appropriate as the issue is of "relative simplicity" and "the outcome is not reasonably debatable." *Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons that follow, the Court will vacate the December 3, 2015, Board decision and remand the matter for readjudication consistent with this decision.

**I. FACTS**

Mr. Hollis served on active duty in the U.S. Army from October 1984 to March 1985 and from March 2003 to May 2004, including service in Iraq. In September 2009, he sought VA benefits for PTSD related to his service in Iraq. He reported having anger, depression, flashbacks, and poor sleep habits with nightmares. He also reported getting into physical altercations. A VA regional office (RO) granted his claim for benefits for PTSD in January 2010 and assigned a 30% disability rating, effective September 30, 2009.

Mr. Hollis later sought an increased disability rating for PTSD. During this time, he reported suicidal and homicidal ideation, including taking a gun to a neighbor's house over a disagreement regarding a football game. He also reported marital problems and problems with his relationships with some of his children. He reported frequent problems with his boss and coworkers as well. After he threatened to "blow up" his work place, he was admitted for psychiatric care, which included being hospitalized for 15 days and prescribed lithium. Record (R.) at 708.

In August 2013, Mr. Hollis underwent a VA examination, at which the examiner noted that he had anxiety, suspiciousness, chronic sleep problems, mild memory loss, difficulty establishing and maintaining social and work relationships, and persistent delusions and hallucinations. In September 2013, the RO increased his PTSD disability rating to 50% effective September 30, 2009.

Mr. Hollis continued to seek a higher disability rating. A June 2014 mental health visit report indicates that he had anger, depression, and poor sleep and continued to be involved in physical altercations. At a June 2015 VA examination, the examiner noted symptoms of depression, anxiety, chronic sleep impairment, mild memory loss, difficulty with relationships, and persistent delusions and hallucinations. The examiner concluded that Mr. Hollis's PTSD symptoms caused "clinically significant distress and impairment in social, occupational, or other important areas of functioning." R. at 41.

On December 3, 2015, the Board issued the decision on appeal. In that decision, the Board denied entitlement to a disability rating in excess of 50% for PTSD. In support, the Board listed the symptoms in the rating criteria that it found Mr. Hollis did not have and found that his symptoms generally fell within the 30% disability range and did not warrant a disability rating higher than 50%. The Board noted that Mr. Hollis did have some symptoms listed under the criteria for 70% and 100% disability ratings. However, the Board found that his level of occupational and social impairment did not reflect entitlement to a higher disability rating.

On appeal, Mr. Hollis argues that the Board misapplied the law by improperly focusing on the presence of particular symptoms and not analyzing his symptoms and their effects on his functioning. He also argues that the Board failed to adequately explain why his symptoms were not sufficient to warrant a higher disability rating.

In response, the Secretary argues that the Board did not err in denying entitlement to a disability rating in excess of 50% for PTSD. The Secretary discusses the evidence relied on by the Board and argues that the evidence supports the Board's findings. The Secretary disputes Mr. Hollis's characterization of the Board's findings and states that his arguments constitute a disagreement with how the Board weighed the evidence, which is not sufficient to show that the Board erred.

## II. ANALYSIS

The assignment of a disability rating is a factual finding that the Court reviews under the "clearly erroneous" standard of review. *Johnston v. Brown*, 10 Vet.App. 80, 84 (1997). A finding of fact is clearly erroneous when the Court, after reviewing the entire evidence, "is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); *Gilbert v. Derwinski*, 1 Vet.App. 49, 52 (1990). In support of its decision, the Board must include a written statement of the reasons or bases for its findings and conclusions on all material issues of fact and law presented on the record adequate to enable an appellant to understand the precise basis for the Board's decision, and to facilitate informed review in this Court. 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995).

Under 38 C.F.R. § 4.130, a veteran suffering from a service-connected mental disorder is entitled to a 50% disability rating if his disorder produces:

[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 (2016).

A veteran is entitled to a 70% disability rating if the symptoms of his disorder cause

[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.*

A veteran is entitled to a 100% disability rating if the symptoms of his disorder cause [t]otal occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name.

*Id.*

The Court has determined that these symptom lists affixed to the rating criteria are not meant to be comprehensive. *Mauerhan v. Principi*, 16 Vet.App. 436, 442 (2002). Instead, they serve as "examples of the type and degree of the symptoms, or their effects, that would justify a particular rating." *Id.* Thus, the Board should not require the presence of "all, most, or even some of the enumerated symptoms" to assign a particular disability rating. *Id.* The Board's analysis should focus on whether "the evidence demonstrates that a claimant suffers symptoms or effects that cause occupational or social impairment equivalent to what would be caused by the symptoms listed in the diagnostic code," and, if so, the "equivalent rating will be assigned." *Id.* at 443.

In *Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 117 (Fed. Cir. 2013), the U.S. Court of Appeals for the Federal Circuit determined that VA "intended the General Rating Formula to provide a regulatory framework for placing veterans on the disability spectrum based upon their objectively observable symptoms." Thus, "symptomatology should be the fact-finder's primary focus when deciding entitlement to a given disability rating" and "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.* Specifically addressing the criteria for a 70% disability rating, the Federal Circuit stated:

Entitlement to a 70 percent disability rating requires sufficient symptoms of the kind listed in the 70 percent requirements, or others of similar severity, frequency or duration, that cause occupational and social impairment with deficiencies in most areas such as those enumerated in the regulation. The 70 percent disability rating regulation contemplates initial assessment of the symptoms displayed by the veteran, and if they are of the kind enumerated in the regulation, an assessment of whether those symptoms result in occupational and social impairment with deficiencies in most areas.

*Id.* at 118.

In denying entitlement to a higher rating, the Board focused on the symptoms in the rating criteria that it found that Mr. Hollis did not have and concluded that his symptoms generally fell within the 30% disability range and did not warrant a disability rating higher than 50%. The Board noted that Mr. Hollis did have some symptoms listed under the criteria for 70% and 100% disability rating. However, the Board noted that his speech and hygiene were good and found that any problems establishing and maintaining effective relationships must not be severe since he remained married and employed. The Court finds this analysis inadequate.

In reaching its conclusion, the Board failed to address the disabling effects of his symptoms and did not discuss evidence regarding problems with his work and familial relationships. In its analysis, the Board did not discuss evidence concerning Mr. Hollis's multiple problems at work, including being suspicious, not working well with others, and making threats that were significant enough to frighten coworkers. These actions resulted in him being required to complete anger management, having his position changed to avoid interacting with others, and being hospitalized for 15 days.

Further, although Mr. Hollis remains married, the Board failed to discuss evidence of problems within the marriage, including frequent arguments and a history of separating. The Board also ignored evidence of a strained relationships with his children and other family members. In addition, the Board only briefly mentioned Mr. Hollis's problems socially outside the family setting, including multiple physical altercations and threatening a neighbor with a gun. Simply stating that Mr. Hollis "remains employed and married despite his reported problems" demonstrates a failure by the Board to fully consider Mr. Hollis's symptoms and the effect that they have on his functioning. R. at 14. Based on the Board's failure to fully discuss

the evidence, the Court finds that the Board's reasons or bases are inadequate and that remand is required. *See Allday*, 7 Vet.App. at 527.

Given this disposition, the Court need not address Mr. Hollis's other arguments, which could not result in a remedy greater than remand. He is free to present those arguments, as well as any additional arguments and evidence, to the Board on remand in accordance with *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order). *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002). The Court reminds the Board that "[a] remand is meant to entail a critical examination of the justification for the [Board's] decision," *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991), and must be performed in an expeditious manner in accordance with 38 U.S.C. § 7112.

### **III. CONCLUSION**

Upon consideration of the foregoing analysis, the record of proceedings before the Court, and the parties' pleadings, the December 3, 2015, Board decision is VACATED and the matter is REMANDED for readjudication consistent with this decision.

DATED: March 30, 2017

Copies to:

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