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

No. 15-4300

CHARLES A. ALBRECHT, 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, Charles A. Albrecht, appeals through counsel that part of a September 30, 2015, Board of Veterans' Appeals (Board) decision that declined a disability rating in excess of 50% for posttraumatic stress disorder (PTSD) with depression.<sup>1</sup> Record (R.) at 2-17. The appellant argues that the Board erred when it (1) failed to properly analyze the appellant's symptoms and the effects on his social and occupational functioning; (2) considered factors that were irrelevant to whether the appellant's symptomatology more closely approximated that corresponding to 70% disability rating; and (3) failed to consider favorable evidence that contradicted its findings. Appellant's Brief at 6-14. For the following reason, the Court will vacate that part of the September 2015 Board decision on appeal and remand the matter

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<sup>1</sup>The Board also denied service connection for a cognitive disability and denied an earlier effective date for the award of a 10% disability rating for scars of the forehead and chin. The appellant presents no argument as to these matters, and the Court deems them abandoned. *See Pederson v. McDonald*, 27 Vet.App. 276, 285 (2015) (en banc) (holding that, where an appellant abandons an issue or claim, the Court will not address it). Additionally, the Board found that new and material evidence had been submitted and granted a request to reopen the claim for service connection for a lower back disability. The Court will not disturb this favorable finding. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007). Lastly, the Board remanded the issues of (1) increased-rating claims for post-traumatic headaches, hiatal hernia, mandible fracture disability, and right elbow epicondylitis; (2) service connection for low back, cervical spine, right knee, and bilateral foot disabilities, hypertension, bilateral hand disability, and bruxism; and (3) total disability for individual unemployment. These matters are not currently before the Court. *See Hampton v. Gober*, 10 Vet.App. 481, 482 (1997).

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 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 Vietnam War veteran with active duty service in the U.S. Navy from June 1965 to August 1968 and from September 1970 to February 1989 as a master at arms. R. at 2730-32 (DD Form 214). During service, the appellant was involved in a head-on vehicle collision. R. at 1914. The appellant also witnessed a crew member killed during a botched plane landing. R. at 1914.

In November 2008, the appellant filed for benefits based on service connection for depression and PTSD. R. at 2296-98. During an August 2009 VA examination, the examiner reported that the appellant cried when talking about the stressors of his PTSD. R. at 1916. The examiner noted that the appellant had significantly reduced social interaction. R. at 1922. The

examiner also found severely limited social functioning caused by the appellant's PTSD. R. at 1922. Moreover, the doctor indicated symptoms of "irritability, anhedonia, low energy, social withdrawal, and loss of self-esteem." R. at 1922-23.

In a December 2009 rating decision, VA awarded the appellant service connection for PTSD with a 30% disability rating. R. at 1784-1803.

In January 2013, VA granted an increased disability rating of 50%, but no higher for the appellant's PTSD. R. at 484. The appellant appealed. R. at 473.

In April 2014, the appellant underwent a VA psychiatric examination. R. at 74-78. The examiner noted that the appellant had a troubled marriage and no relationship with his two children. R. at 75. The examiner also found that the appellant had a dislike of people and preferred not to socialize. R. at 75-76. The examiner found that the appellant's psychiatric symptoms included "depressed mood, nightmares, self-isolation, avoidance of crowds, hypervigilance, . . . and exaggerated startle [response]." R. at 76.

In September 2015, the Board denied a disability rating in excess of 50% for the appellant's PTSD. R. at 2-21. In reaching its decision, the Board found that the appellant did not have hallucinations, suicidal or homicidal ideations, nor a history of panic attacks or irritability that led to violence. R. at 14. The Board also relied on the fact that the appellant had demonstrated good hygiene, eye contact and normal judgment as well as the fact that he was oriented during examinations and treatment. R. at 14. The appellant's social interactions were found to be significantly reduced but appropriate given that the appellant had managed to maintain relationships at least to some extent with family, friends, and neighbors. R. at 14. The Board then relied on the August 2009, March 2010, and April 2014 VA examinations along with the 2013 private treatment record's finding that the appellant's symptoms were intermittent and only interfered with his functioning occasionally. R. at 15. The Board found it "significant that the clinical evidence [did] not show that the [appellant] required or desired any type of therapy for his service-connected PTSD with depression at any time during the pendency of the appeal." R. at 15. This appeal ensued.

The Court concludes that the Board provided an inadequate statement of reasons or bases for denying a higher disability rating. *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). The Board, in error, denied a 70% disability rating relying almost solely on the absences of specific symptoms under 38 C.F.R. § 4.130 rating criteria. *See Mauerman v. Principi*, 16 Vet.App. 436, 442 (2006) (holding that symptoms listed in the rating formula are examples and that "any suggestion that the Board was required, in complying with the regulation, to find the presence of all, most or even some, of the enumerated symptoms is unsupported by a reading of the plain language of the regulation"); *see also Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 118 (Fed. Cir. 2013) (noting the Board's primary consideration is the veteran's symptoms). In compounding this error, the Board failed to adequately address the severity, frequency, and duration of the symptoms the Board found the appellant did have. R. at 14; *see Vazquez-Claudio*, 713 F.3d at 117 (finding a veteran may qualify for a disability rating by demonstrating symptoms of severity, frequency and duration similar to symptoms associated with the rating). While the Board may have addressed the frequency, severity, *or* duration of some of the appellant's psychological symptoms, it failed to address all these factors for any symptom. *See Vasquez-Claudio, supra*.

Further, the Board denied a higher rating because of the appellant's lack of treatment, something that is not contemplated under § 4.130. *See id.* The Board did not explain how the lack of treatment was relevant to the denial of the higher rating.

Remand is required for the Board to provide an adequate statement of reasons or bases for the appropriate rating. *See Gilbert, supra*.

Because the Court is remanding the matter, it will not address the appellant's remaining arguments. *See Dunn v. West*, 11 Vet.App. 462, 467 (1988). 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 a short delay, and may be utterly ruined, by a long one.").

Based on the foregoing reason, that part of the September 30, 2015, Board decision on appeal is VACATED and the matter is REMANDED for readjudication.

DATED: April 28, 2017

Copies to:

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