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

No. 16-0799

WILLIAM ALEXANDER, JR., APPELLANT,

v.

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

Before BARTLEY, *Judge*.

**MEMORANDUM DECISION**

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

BARTLEY, *Judge*: Veteran William Alexander, Jr., appeals through counsel a January 19, 2016, Board of Veterans' Appeals (Board) decision denying service connection for a bilateral knee disorder, to include as secondary to service-connected disabilities. Record (R.) at 2-12. Single-judge disposition is appropriate in this case. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). This appeal is timely and the Court has jurisdiction to review the Board decision pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). For the reasons that follow, the Court will set aside the January 19, 2016, Board decision and remand the matter for further development, if necessary, and readjudication consistent with this decision.

**I. FACTS**

Mr. Alexander served on active duty in the U.S. Army from April 1968 to July 1976. R. at 3, 2727. In February 2006, he filed a claim for service connection for a bilateral knee condition, a bilateral ankle condition, and bilateral pes planus. R. at 2769. In May 2006, a VA examiner diagnosed bilateral knee degenerative joint disease (DJD), bilateral ankle strains with DJD, bilateral pes planus with DJD, heel spurs, Achilles tendon spurs, and morbid obesity. R. at 2705. The examiner noted that the veteran used a cane and an electric wheelchair because of bilateral

knee arthritis and that the knee and ankle conditions interfered with daily activities such as walking or standing for long periods. R. at 2705.

In June 2006, a VA regional office (RO) granted service connection for left and right ankle sprain residuals and bilateral pes planus. R. at 2672. A July 2006 VA examiner stated without any explanation that it was less likely than not that the veteran's left and right knee DJD was due to service-connected pes planus or ankle sprain residuals. R. at 2419. In September 2006, the RO denied service connection for, inter alia, bilateral knee and bilateral ankle conditions, R. at 2622, and in December 2006 confirmed and continued the September 2006 decision as to the bilateral knee condition, R. at 2593.

In a November 2006 letter, Dr. Pedro Estorque, a private physician, stated that Mr. Alexander had chronic advanced DJD of the knees, ankles, and feet with impaired mobility; was morbidly obese; and required a motorized wheelchair. R. at 2612. The doctor noted that the veteran had been his patient since 1999 and that his joint-related impairment, ankle pain, and poor mobility had been progressing since active duty, as indicated in 1970s military records he submitted. *Id.* In a February 2007 letter, Dr. Estorque stated that morbid obesity contributed to the veteran's overall problems that included, inter alia, knee, ankle, and foot DJD; ankle sprains; diabetes mellitus; and hypertensive cardiovascular disease. R. at 2583.

In February 2007, Mr. Alexander filed a Notice of Disagreement and in a May 2007 Statement of the Case, the RO continued to deny service connection for a bilateral knee condition. R. at 2570, 2581. In June 2007, the veteran perfected his appeal. R. at 2550. In July 2011, the RO granted service connection for, inter alia, diabetes mellitus, bilateral upper and lower extremity peripheral neuropathy, and chronic kidney disease and increased evaluations for right and left ankle sprain residuals. R. at 1541-42.

An August 2011 VA examination report noted left foot transmetatarsal amputation secondary to diabetes mellitus. R. at 1509-10. A December 2011 VA examiner stated that the veteran was "very unsteady on his feet" and used a motorized wheelchair and that during the examination he attempted to take several steps with a cane but could barely move. R. at 1442. The examiner opined that morbid obesity significantly contributed to his impaired mobility and that service-connected diabetes, with its severe peripheral neuropathy and renal involvement, coupled with chronic bilateral ankle instabilities, rendered him totally disabled. *Id.*

In March 2012, the RO granted service connection for left foot transmetatarsal amputation with pes planus and entitlement to automobile and adaptive equipment, special monthly compensation (SMC) based on loss of use of a foot from November 2010, and SMC based on housebound status from November 2010 to March 2011. R. at 1398.

A June 2012 VA examiner opined that it was less likely than not that Mr. Alexander's bilateral knee condition was proximately due to or the result of a service-connected condition and more likely than not related to chronic degenerative changes associated with aging and morbid obesity. R. at 1343-44 (noting that orthopedic literature revealed no credible, peer-reviewed studies supporting the contention that degenerative changes in one joint may induce degenerative changes in another joint).

In July 2013, the Board remanded the bilateral knee claim to obtain a new VA examination, finding the July 2006 and June 2012 VA examination reports inadequate because they considered only the causation aspect of secondary service connection and did not address secondary service connection based on aggravation. R. at 1206. The Board instructed the examiner to opine whether it was at least as likely as not that the bilateral knee condition was aggravated beyond the normal progress of the disorder by service-connected right foot pes planus, left foot transmetatarsal amputation with pes planus, or left and right ankle sprain residuals. R. at 1210; *see* R. at 383.

An August 2013 VA examiner opined that Mr. Alexander's bilateral knee condition was less likely than not proximately due to or the result of a service-connected condition because review of orthopedic literature revealed that it was more likely than not due to chronic degenerative changes associated with aging and morbid obesity. R. at 896.

In March 2015, the Board again remanded the bilateral knee claim, finding the August 2013 examination inadequate because it did not address the aggravation aspect of secondary service connection. R. at 838. The Board noted the August 2013 examiner's finding that the veteran's bilateral knee condition was less likely than not proximately due to or the result of service-connected disabilities, but stated that the examiner provided no rationale for this opinion and that this Court had held it unclear whether a medical opinion finding that a claimed disorder is not "caused by" a service-connected disability encompasses the question of aggravation. *Id.* (citing *El-Amin v. Shinseki*, 26 Vet.App. 136, 140 (2013)). The Board ordered a new examination and instructed the examiner to address the following question: "Is it at least as likely as not . . . that

the [v]eteran's bilateral knee disability was caused or aggravated by any of his service-connected disabilities, including his bilateral foot disability or his bilateral ankle disability?" R. at 839-40.

A June 2015 VA examiner opined that it was less likely than not that Mr. Alexander's bilateral DJD was caused by, aggravated by, or the result of his service-connected disabilities, including bilateral foot and ankle disabilities, because there was no peer-reviewed medical literature supporting the contention that pes planus, unilateral forefoot amputation, or bilateral ankle sprain residuals cause or aggravate the development of bilateral knee DJD. R. at 84. The examiner noted that pes planus and gait disturbances had not been shown to aggravate the development of knee DJD and that he was unaware of an association between diabetes mellitus and aggravation of knee DJD. *Id.* The examiner explained that DJD is caused by chronic weight bearing on the knees, develops over a lifetime, and gradually progresses. *Id.* The examiner noted that the veteran's chronic obesity aggravated his bilateral knee DJD because it increased weight bearing on the knees. *Id.*

In the January 2016 decision on appeal, the Board recounted the June 2012, August 2013, and June 2015 VA opinions and stated that, when read in conjunction with one another, those examinations were adequate because they discussed relevant evidence, considered the veteran's statements, and provided rationale for their conclusions. R. at 9. The Board found that the examiners competently opined that Mr. Alexander's bilateral knee disability was the result of aging and morbid obesity and was not related to service. R. at 11. The Board therefore denied service connection for a bilateral knee disability, to include as secondary to service-connected disabilities. R. at 2. This appeal followed.

## II. ANALYSIS

Mr. Alexander argues that the Board erred by (1) failing to address a reasonably raised claim that his service-connected disabilities caused or aggravated obesity and that such obesity subsequently caused or aggravated his bilateral knee condition; (2) relying on inadequate VA examinations; and (3) providing inadequate reasons or bases for denying service connection. Appellant's Brief (Br.) at 8-18; Appellant's Reply Br. at 4-8. The Secretary disputes the veteran's arguments and urges the Court to affirm the January 2016 Board decision. Secretary's Br. 3-13. The Court finds that the Board failed to address a reasonably raised secondary service connection theory and to provide adequate reasons or bases for its decision.

It is well established that the Board is required to consider all theories of entitlement to VA benefits that are either raised by the claimant or reasonably raised by the record. *Schroeder v. West*, 212 F.3d 1265, 1271 (Fed. Cir. 2000); *DeLisio v. Shinseki*, 25 Vet.App. 45, 53 (2011) (finding that "upon the filing of a claim for benefits, the Secretary generally must investigate the reasonably apparent and potential causes of the veteran's condition and theories of service connection that are reasonably raised by the record or raised by a sympathetic reading of the claimant's filing"); *Robinson v. Peake*, 21 Vet.App. 545, 552 (2008), *aff'd sub nom. Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009); *see also Clemons v. Shinseki*, 23 Vet.App. 1, 3 (2009) (per curiam order) (noting that the Court has "jurisdiction to remand to the Board any matters that were reasonably raised below that the Board should have decided, with regard to a claim properly before the Court, but failed to do so").

Here, the record reasonably raised the issue of whether Mr. Alexander's obesity was as likely as not caused or aggravated by his service-connected disabilities and, in turn, whether his obesity as likely as not caused or aggravated his bilateral knee condition. First, the record contains unequivocal evidence that the veteran's bilateral knee DJD was either caused or worsened by morbid obesity. The June 2015 VA examiner opined that the veteran's chronic obesity at the very least aggravated his bilateral knee DJD because it increased weight bearing on the knees. R. at 84. And, given the extent and severity of Mr. Alexander's other service-connected conditions that impede exercise and mobility, including left foot transmetatarsal amputation with loss of use of the left foot, residuals of bilateral ankle sprains, and bilateral lower extremity peripheral neuropathy, the record raised the issue of whether Mr. Alexander's service-connected disabilities potentially caused or aggravated the obesity that has been determined to have at least aggravated his bilateral knee condition. *See DeLisio*, 25 Vet.App. at 53 (VA must address "the reasonably apparent and potential causes of the veteran's condition"). The various medical records that raise this issue include the May 2006 VA examiner opining that ankle conditions interfere with daily activities such as walking or standing, R. at 2705; Dr. Estorque's November 2006 letter noting that Mr. Alexander had chronic advanced ankle and feet DJD with impaired mobility, was morbidly obese, and required a motorized wheelchair, R. at 2612; the December 2011 VA examiner opining that service-connected diabetes, with severe peripheral neuropathy and renal involvement, coupled with chronic bilateral ankle instabilities, rendered the veteran totally disabled; that the veteran was "very unsteady on his feet," used a motorized wheelchair, and could barely move with a cane; and

that morbid obesity significantly impaired mobility, R. at 1142; and in March 2012, following the veteran's left foot transmetatarsal amputation, the RO's grant of entitlement to SMC based on loss of use of a foot, R. at 1398.

Accordingly, the Board was required to address the merits of the reasonably raised claim pertaining to secondary service connection; namely, whether the veteran's service-connected disabilities as likely as not caused or aggravated obesity and whether such obesity as a consequence as likely as not subsequently caused or aggravated the bilateral knee condition, *see Schroeder*, 212 F.3d at 1271; *DeLisio*, 25 Vet. App. at 53, and because it failed to do so, remand is required, *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"). Therefore, the Court will remand for the Board to provide a decision as to such reasonably raised secondary service connection claim or to remand to the agency of original jurisdiction for development as needed.

Mr. Alexander also argues that the Board provided inadequate reasons or bases for finding the June 2012, August 2013, and June 2015 VA examinations adequate because the Board previously found the June 2012 and August 2013 examinations *inadequate* as to secondary service connection based on aggravation and then, in the current decision, merely reiterated the June 2015 examiner's opinion without analyzing the issue of secondary service connection based on aggravation. Appellant's Br. at 12-13. The Court finds that, despite twice remanding the veteran's bilateral knee claim because prior VA examinations did not address secondary service connection based on aggravation, *see* R. at 1206 (July 2013 Board remand because the June 2012 examination was inadequate); R. at 838 (March 2015 Board remand because the August 2013 examination was inadequate), the Board, without reasoning or discussion of secondary service connection based on aggravation, found that these same examiners competently opined that the veteran's bilateral knee disability was the result of aging and morbid obesity and not related to service. *See El-Amin*, 26 Vet.App. at 138-140 (finding that contributing factors to a disorder "[do] not rule out the possibility that it was also aggravated to some degree" by service-connected conditions and that an examiner's use of the phrase "related to" could not be said to encompass a discussion of aggravation). The Board therefore failed to provide adequate reasons or bases for determining that Mr. Alexander's bilateral knee condition was not aggravated by his service-connected disabilities. *See id.*; *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990) (the Board's statement must be adequate to enable a

claimant to understand the precise basis for the decision and to facilitate judicial review). Thus, on remand, the Board must address aggravation in its analysis of secondary service connection.

To the extent that Mr. Alexander challenges the adequacy of the June 2015 VA examiner's opinion as to secondary service connection based on aggravation of his bilateral knee condition, Appellant's Br. at 7-12, the Court has determined that remand is warranted and the Board will necessarily render a new decision after reassessing all evidence of record, including the adequacy of the June 2015 VA examination, particularly with regard to secondary service connection. The Court reminds the Board that to be adequate, a medical opinion regarding secondary service connection must address both causation and aggravation, *El-Amin*, 26 Vet.App. at 138-140, and "support its conclusions with an analysis that the Board can consider and weigh against contrary opinions," *Stelf v. Nicholson*, 21 Vet.App. 120, 124 (2007).

The veteran is free on remand 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 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, the appealed portion of the January 19, 2016, Board decision is SET ASIDE and the matter is REMANDED for further development, if necessary, and readjudication consistent with this decision.

DATED: May 30, 2017

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