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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 15-4037

WOODY L. WOODS, APPELLANT,

v.

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

Before DAVIS, *Chief Judge*.

MEMORANDUM DECISION

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

DAVIS, *Chief Judge*: U.S. Army veteran Woody L. Woods appeals through counsel a September 14, 2015, Board of Veterans' Appeals (Board) decision that denied a disability rating in excess of 70% for post-traumatic stress disorder (PTSD) and denied entitlement to a total disability rating based on individual unemployability (TDIU).¹ For the following reasons, the Court will set aside the Board's determination with respect to service connection for a psychiatric disorder and remand for further proceedings.

I. ANALYSIS

A. PTSD

Mr. Woods asserts that the Board erred when it determined that he "did not have total social impairment because he ate lunch and dinner with his mother, maintained contact with his ex-wife,

¹ The Board granted an increase from 50% to 70% prior to May 30, 2007. This is a favorable finding that the Court will not disturb. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007). Mr. Woods does not raise any arguments with regard to the Board's determination that referral for extraschedular consideration was not warranted and, therefore, the Court need not address it. *Grivois v. Brown*, 6 Vet.App. 136, 138 (1994) (holding that issues or claims not argued on appeal are considered abandoned).

and interacted with peers while hospitalized for psychiatric treatment." Appellant's Brief (Br.) at 13. The Court agrees.

The Board is required to support its determinations of fact and law with a written statement of reasons or bases that is understandable by the claimant and facilitates review by this Court. *See* 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995). The statement of reasons or bases must explain the Board's reasons for discounting favorable evidence, *Thompson v. Gober*, 14 Vet.App. 187, 188 (2000), discuss all issues raised by the claimant or the evidence of record, *Robinson v. Peake*, 21 Vet.App. 545, 552 (2008), *aff'd, sub nom. Robinson v. Shinseki*, 557 F.3d 1335 (Fed. Cir. 2009), and discuss all provisions of law and regulation that are made "potentially applicable through the assertions and issues raised in the record," *Schafrath v. Derwinski*, 1 Vet.App. 589, 592 (1991).

A statement of reasons or bases is "particularly acute when [Board] findings and conclusions pertain to the degree of disability resulting from mental disorders." *Mittleider v. West*, 11 Vet.App. 181, 182 (1998). The Board's PTSD discussion should focus primarily on the severity, frequency, and duration of the veteran's symptoms. It is not sufficient for the Board to simply match the symptoms listed in the rating criteria against those exhibited by a veteran. Rather, "VA must engage in a holistic analysis" of the severity, frequency, and duration of the signs and symptoms of the veteran's mental disorder, determine the level of occupational and social impairment caused by those signs and symptoms, and assign an evaluation that most nearly approximates that level of occupational and social impairment. *Bankhead v. Shulkin*, No. 15-2404, 2017 WL 1131190, at *9 (U.S. Vet. App. Mar. 27, 2017).

VA regulations state that "where there is a question of which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria for that rating. Otherwise, the lower rating will be assigned." 38 C.F.R. § 4.7 (2016). With respect to PTSD, a 70% disability rating is warranted when there is

[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 work-like setting); inability to establish and maintain effective relationships.

38 C.F.R. § 4.130, Diagnostic Code (DC) 9411 (2016). A 100% disability rating is appropriate when a veteran has

[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. "Activities of daily living (ADLs) means the functions or tasks for self-care usually performed in the normal course of a day, i.e., mobility, bathing, dressing, grooming, toileting, transferring, and eating." 38 C.F.R. § 52.2 (2016).

A veteran may 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.*" *Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 117 (Fed. Cir. 2013) (emphasis added). This Court has observed that the listed symptoms are examples of the type and degree of the manifestations of a mental disability required for a given disability rating, and that the presence of "all, most, or even some of the enumerated symptoms" is not required to support a disability rating. *Mauerhan v. Principi*, 16 Vet.App. 436, 442 (2002).

The Board relied on the fact that Mr. Woods has contact with various family members, including his ex-wife and mother when it found that he fails to demonstrate total social impairment. *See R.* at 38. As Mr. Woods persuasively argues, however, nothing in the 100% criteria requires that he has no contact with others to demonstrate that he suffers from total social impairment as required by the schedular criteria for a 100% disability rating for PTSD. Rather, a 100% rating for PTSD requires total occupational and social *impairment*.

In addition, the Board failed to address evidence that arguably supported a higher disability rating. The record is replete with evidence that he would not bathe or eat were it not for the help of various family members—those with whom he has contact. *R.* at 207 (reporting that his estranged wife does the grocery shopping for him and cleans his house, does his laundry, and cooks for him); 1861 (reporting that he had spent the majority of the last 3 years in bed and did not go out of the house); 2116 (acknowledging that he would not eat until his ex-wife returned home);

2119 (testifying that he his ex-wife forces him to bath). The Board failed to discuss whether this evidence rose to the level of an inability to maintain personal hygiene or perform activities of daily living, examples of symptoms in the 100% disability criteria.

Finally, the Court finds that, although the Board recounted the extensive medical evidence of record, the Board failed to reconcile or analyze evidence that was arguably favorable to Mr. Woods's claim, including assessing the probative value of that evidence. *See* 38 U.S.C. § 7104(d)(1); *Dennis v. Nicholson*, 21 Vet.App. 18, 22 (2007) (holding that "merely listing evidence before stating a conclusion does not constitute an adequate statement of reasons and bases."); *Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff'd per curiam*, 78 F.3d 604 (Fed. Cir. 1996) (table). In fact, the Board simply listed the evidence of record and concluded it did "not find that the evidence of outbursts of anger, social isolation, and an inability to regulate mood have resulted in total social impairment." R. at 38. Thus, the Court and Mr. Woods are left to speculate on the Board's reasoning in arriving at a disability rating of 70%, and review is frustrated. For the foregoing reasons, remand is warranted for the Board to provide an adequate statement of reasons or bases as to the proper schedular disability rating for PTSD. *See Tucker v. West*, 11 Vet.App. 369, 374 (1998).

B. TDIU

Mr. Woods also asserts that the Board provided inadequate reasons or bases for denying his request for a TDIU. The Court agrees.

"[T]otal disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation." 38 C.F.R. § 4.15 (2016). Even where a service-connected disability is less than total, a veteran may be entitled to a total disability rating if he is "unable to secure or follow a substantially gainful occupation" as a result of service-connected disabilities. 38 C.F.R. § 4.16(a) (2016). If there is only one service-connected disability, it must be rated 60% or more disabling. *Id.* If there are two or more service-connected disabilities, at least one of them must be rated 40% disabling with "sufficient additional disability to bring the combined rating to 70[%] or more." *Id.*

"[M]edical examiners are responsible for providing a 'full description of the effects of disability upon the person's ordinary activity,'" while the rating agency "is responsible for 'interpret[ing] reports of examination in the light of the whole recorded history, reconciling the various reports into a consistent picture so that the current rating may accurately reflect the

elements of the disability present." *Floore v. Shinseki*, 26 Vet.App. 376, 381 (2013) (quoting 38 C.F.R. § 4.10 and § 4.2 (2013) respectively).

Here, the Board found that Mr. Woods met the percentage requirements of § 4.16(a) and, thus, the only remaining question is whether he is unable to secure or follow a substantially gainful occupation as the result of her service-connected disabilities. R. at 40. After listing the various conflicting VA examinations of record, the Board summarily concluded that "[t]he opinions against the claim outweigh those for it." R. at 45. First, the Board, in effect, merely adopted the medical opinions of several of the examiners, but failed to address the opinions of the other examiners that were favorable to Mr. Woods or explain the reasons for discounting them. At a minimum, this raises a question as to whether the Board properly weighed the evidence or simply abdicated its responsibility to those medical examiners who provided negative opinions with regard to Mr. Woods's ability to secure or follow a substantially gainful occupation as a result of his service-connected PTSD. Because the Board failed to account for favorable evidence in the record, the Court concludes that the Board's reasons or bases are insufficient for judicial review. *See* 38 U.S.C. § 7104(d)(1); *see also Thompson v. Gober*, 14 Vet.App. 187, 188 (2000) (Board must explain the reasons for discounting favorable evidence). Accordingly, remand is warranted. *See Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990).

In pursuing his claim on remand, Mr. Woods is free to submit additional evidence and argument in accordance with *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order) and, in fact, is encouraged to do so. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002). "A remand is meant to entail a critical examination of the justification for the decision" by the Board. *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991). In addition, the Board shall proceed expeditiously, in accordance with 38 U.S.C. § 7112 (expedited treatment of remanded claims).

II. CONCLUSION

On consideration of the foregoing, the Board's September 14, 2015, decision is SET ASIDE and the case is REMANDED for further adjudication.

DATED: June 14, 2017

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