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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 16-3464

HAROLD BEARD, 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 Harold Beard appeals through counsel a September 16, 2016, decision of the Board of Veterans' Appeals (Board) that denied disability compensation for a low back disability. The parties have neither requested oral argument nor identified issues that they believe require a precedential decision of the Court. For the following reasons, the Board's September 2016 decision will be set aside and the matter remanded for further proceedings.

I. ANALYSIS

Mr. Beard argues that the Board inadequately explained why it accorded little probative weight to his statement that a doctor told him his original injury was a ruptured disc that had worsened through chiropractic treatment and developed "spurs and arthritis." Record (R.) at 27. He also argues that, in rejecting his lay statement, the Board erred in relying on VA medical examinations from 2013 and 2016 that did not discuss the statement. The Court agrees.

The Board is required to support its decision with a written statement of the 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 where they are made "potentially applicable through the assertions and issues raised in the record," *Schafraath v. Derwinski*, 1 Vet.App. 589, 592 (1991).

A medical opinion is adequate "where it is based on consideration of the veteran's prior medical history and examinations and also describes the disability, if any, in sufficient detail so that the Board's 'evaluation of the claimed disability will be a fully informed one.'" *Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007) (quoting *Ardison v. Brown*, 6 Vet.App. 405, 407 (1994)). The opinion "must support its conclusion with an analysis that the Board can consider and weigh against contrary opinions." *Id.* at 124. In order to fully inform the Board's decision, an opinion must "contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two." *Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008). An examination that merely lists facts and conclusions with no reasoned explanation connecting the two therefore lacks probative weight. *Id.*

Here, the Board found Mr. Beard competent to relate what his doctor had told him, but determined that "[a]s compared to the medical opinions of record, the submitted lay statements suggesting etiology hold little probative value." R. at 8. Neither the 2013 nor the 2016 examination, however, includes any discussion as to the matters expressed in Mr. Beard's lay statements. Although an examiner need not discuss all favorable evidence in the record, here, the examiners' failure to opine as to these matters leaves the Board without any medical analysis to weigh against them. *Stefl*, 21 Vet.App. at 124; *see also Colvin v. Derwinski*, 1 Vet.App. 171, 172 (1990) (Board "must consider only independent medical evidence to support [its] findings rather than provide [its] own medical judgment in the guise of a Board opinion."). Remand is warranted. *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").

Because the claim is being remanded, the Court need not address Mr. Beard's additional arguments as to other inadequacies in the Board's statement of reasons or bases. *See Mahl v. Principi*, 15 Vet.App. 37, 38 (2001) (per curiam order) ("[I]f the proper remedy is a remand, there

is no need to analyze and discuss all the other claimed errors that would result in a remedy no broader than a remand."). However, in pursuing his claim on remand, Mr. Beard will be free to submit additional argument and evidence as to the remanded matter, and the Board must consider any such evidence or argument submitted. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002).

II. CONCLUSION

On consideration of the foregoing, the Board's September 16, 2016, decision is SET ASIDE and the matter REMANDED for further proceedings.

DATED: October 16, 2017

Copies to:

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