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

No. 16-4008

EDDIE D. VINSON, 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, Eddie D. Vinson, appeals through counsel that part of a September 30, 2016, Board of Veterans' Appeals (Board) decision that denied entitlement to a total disability rating based on individual unemployability (TDIU) due to a service-connected disability.<sup>1</sup> R. at 14-17. The appellant argues that the Board provided an inadequate statement of reasons or bases for its denial of entitlement to TDIU. Appellant's Brief at 9-19. For the following reason, the Court will vacate that part of the Board's September 2016 decision on appeal, and remand the matter 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, is consistent with congressional

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<sup>1</sup> The Board also denied entitlement to a disability rating in excess of 70% for posttraumatic stress disorder (PTSD) from May 3, 2012. The appellant presents no argument as to this matter, and the Court deems it 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 granted an initial disability rating of 70% for PTSD from April 26, 2007. The Court will not disturb this favorable finding. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007).

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 veteran who served on active duty in the U.S. Army from October 1967 to October 1969 as a light air defense artillery crewman. R. at 44 (DD Form 214). While deployed, the appellant experienced direct fire and rocket attacks, was involved in an attack that killed innocent civilians, and was threatened at gunpoint by a soldier in his unit. R. at 340.

In 2003, the appellant left his job as a janitor when the warehouse closed. R. at 528. The appellant has not worked since that time. R. at 528. In December 2004, the appellant suffered two strokes. R. at 204. In April 2007, the appellant filed for benefits based on service connection for PTSD. R. at 496. R. at 1294. VA initially granted service connection for PTSD with a 30% rating which was subsequently raised to 70%, effective April 26, 2007. R. at 328; R. at 17. In granting a 70% rating, the Board found that the appellant had deficiencies in most occupational and social areas including family relations, work, judgement, thinking, and mood. R. at 12. The appellant, however, stated that he does attend church. R. at 305. The Board also acknowledged that the appellant suffered from flashbacks, nightmares, hypervigilance, and an exaggerated startle response. R. at 11.

In September 2016, the Board issued a decision denying entitlement to TDIU due to PTSD. In reaching its decision, the Board noted the emotional problems the appellant exhibited at work, his arguments with coworkers, and his thoughts of hurting them. R. at 16. The Board found that the appellant had previously been able to maintain employment despite his symptoms. R. at 16. The Board also stated that because the appellant attends church twice a week, he shows that he can manage his symptoms. R. at 17. This appeal ensued.

The Court concludes that the Board provided an inadequate statement of reasons and bases for its denial of entitlement to TDIU. *See Gilbert v. Derwinski*, 1 Vet.App. 49, 56-57 (1990) (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). Despite acknowledging the severity of the appellant's symptoms, the Board found that the appellant had been able to work in the past. R. at 16-17. The Court does not understand how the appellant's ability to work in 2003 is relevant to the appellant's employability for the period on appeal.

The Board also stated that the appellant's bi-weekly church attendance evidenced the appellant's ability to manage his symptoms. R. at 17. Again, it is unclear how going to church is indicative of the appellant's employability, as attending brief individually-based social functions bears no resemblance to working in a stressful work environment. Remand is required for the Board to provide an adequate statement of reasons and bases for whether the appellant is entitled to TDIU due to PTSD. *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 (1998). 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). The remanded matter is to be provided expeditious treatment. *See* 38 U.S.C. § 7112; *see also Hayburn's Case*, 2 U.S. at 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 . . . ." (internal quotation marks omitted)).

Based on the foregoing reason, that part of the September 30, 2016, Board decision on appeal is VACATED and the matter is REMANDED for readjudication.

DATED: October 31, 2017

Copies to:

Zachary M. Stolz, Esq.

VA General Counsel (027)