REPLY BRIEF OF APPELLANT

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

16-1561

EVANIE E. ATENCIO

Appellant,

v.

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

Appellee.

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I. GERD can be considered a medically unexplained chronic multisymptom illness ("MUCMI").

a. GERD is not categorically precluded from being a MUCMI.

The Secretary is incorrect that Ms. Atencio's GERD is excluded from ever being considered a medically unexplained chronic multisymptom illness ("MUCMI") because it is a structural gastrointestinal disease and not a functional gastrointestinal disease. Sec. Br. at 10. This position is unsupported by the plain language of the regulation. *Compare* 38 C.F.R. §§ 3.317(a)(ii)(2)(i)(B)(1)-(B)(3) (2017) *with* 38 C.F.R. § 3.317(a)(2)(ii) (2017).

The plain language of the regulation makes clear that there are two separate and distinct ways a veteran can demonstrate her disease or disability is a MUCMI.[1] *See id.* First, a MUCMI is "defined by a cluster of signs or symptoms, such as: (1) Chronic fatigue syndrome; (2) Fibromyalgia; (3) Functional gastrointestinal disorders (excluding structural gastrointestinal diseases)." 38 C.F.R. §§ 3.317(a)(ii)(2)(i)(B)(1)-(B)(3) (2017). Second, in a separate part of the regulation, a MUCMI is defined as "a diagnosed illnesses without conclusive pathophysiology or etiology[.]" 38 C.F.R. § 3.317(a)(2)(ii). Therefore, a gastrointestinal disability can qualify as a MUCMI if: (1) it is a functional gastrointestinal disorder; or (2) it has an unknown etiology or pathophysiology. *See* 38 C.F.R. § 3.317.

The "such as" language used in subsection (a)(ii)(2)(i)(B) supports this argument. The list of disabilities noted in subsection (a)(2)(i)(B) is a floor and not a ceiling. *See*

[1] Presuming the veteran's qualifying service in the Persian Gulf. 38 C.F.R. § 3.317(a)(1). It is undisputed that Ms. Atencio qualifies as a Persian Gulf Veteran for purposes of the regulation. Sec. Br. at 5.

Mauerhan v. Principi, 16 Vet.App. 436, 442 (2002) ("By definition, 'such as' means 'for example' or 'like similar to.'"). Simply because a structural gastrointestinal disability cannot be considered a MUCMI for purposes of subsection (a)(2)(i)(B)(3) does not mean it cannot be a MUCMI for purposes of subsection (a)(2)(ii).

Since the plain language of the regulation is clear, that should be the end of the inquiry and that is the interpretation to be applied in this case. *See Tropf v. Nicholson*, 20 Vet. App. 317, 320 (2006). GERD can be a MUCMI if it is a diagnosed illness without conclusive etiology or pathophysiology. *See* 38 C.F.R. § 3.317(a)(2)(ii). Therefore, the Board misinterpreted the law when it decided that Ms. Atencio was not entitled to service connection because GERD cannot be a MUCMI per the regulation. R-6-7 (1-15); Apa. Open. Br. at 6-9.

The legislative history of the regulation also supports this reading. *See* Presumptive Service Connection for Diseases Associated With Service in the Southwest Asia Theater of Operations During the Persian Gulf War: Functional Gastrointestinal Disorders, 76 Fed. Reg. 41696-014 (July 15, 2011); *Frederick v. Shinseki*, 684 F.3d 1263, 1269 (Fed. Cir. 2012) ("Where ambiguity persists after application of the standard tools of statutory construction, legislative history may be used to resolve any such ambiguity.").

One comment to the proposed regulation suggested veterans be afforded presumptive service connection for structural gastrointestinal disorders, to include GERD or bowel inflammatory conditions, assuming qualifying service in the Persian Gulf. *Id.* at 41696. VA did not change the regulation based on that comment because it noted the rule making was "limited to clarifying the scope of the presumption for [Functional

Gastrointestinal Disorders] as medically unexplained chronic multisymptom illness." *Id.* Thus, the legislative history reflects that structural gastrointestinal disorders are not entitled to presumptive service connection as a MUCMI under subsection (a)(ii)(2)(i)(B)(3) because they are not functional gastrointestinal disorders. *See* 38 C.F.R. § 3.317(a)(ii)(2)(i)(B)(3). That does not, however, preclude structural gastrointestinal disorders from meeting the definition of a MUCMI under subsection 38 C.F.R. § 3.317(a)(2)(ii).

Further, the Secretary issued the regulation to "delegate[e] to VA adjudicators the authority to determine on a *case-by-case*" basis the issue of service connection for MUCMIs. Compensation for Certain Disabilities Due to Undiagnosed Illnesses, 75 Fed. Reg. 61995-07, 61996 (October 7, 2010) (emphasis added). The Secretary, in the comments to the final rule, stated that "it is solely a medical determination whether that illness [other than chronic fatigue syndrome, fibromyalgia, or irritable bowel syndrome] qualifies under revised § 3.317(a)(2)(i)(B) as a 'medically unexplained chronic multisymptom illness.'" *Id.* Those same comments say the Secretary "delegate[ed] to VA adjudicators the authority to determine on a case-by-case basis whether additional diseases meet the criteria of paragraph (a)(2)(ii) in the same manner as they make other determinations necessary in deciding claims." *Id.* A categorical bar keeping GERD from being considered a MUCMI contravenes the purpose of the regulation and the intended role of VA adjudicators to consider whether a disability is a MUCMI on a case-by-case basis. *See id.; but see* Sec. Br. at 10.

If the Secretary is correct that the plain language of the regulation supports his reading, it should be rejected, as it would lead to an absurd result. Sec. Br. at 9-10; *see Gardner, v. Derwinski*, 1 Vet.App. 584, 587 (1991) ("The 'absurd result' exception to the plain

meaning rule is, however, narrow and limited to situations 'where it is quite impossible that Congress could have intended the result . . . and where the alleged absurdity is so clear as to be obvious to most anyone.'"); *see Smith v. Brown,* 35 F.3d 1516, 1523 (Fed. Cir. 1994) ("The canons of construction of course apply equally to any legal text and not merely to statutes.").

Applying the Secretary's plain meaning argument, a veteran who had fibromyalgia would have to prove it was a MUCMI twice before service connection was warranted under the regulation. The Veteran would first have to demonstrate she had fibromyalgia, which would render it a MUCMI.[2] *See* 38 C.F.R. § 3.317(a)(ii)(2)(i)(B)(2). She then would have to demonstrate that her fibromyalgia was a MUCMI again by showing it had an unknown etiology or pathophysiology. 38 C.F.R. § 3.317(a)(2)(ii). This simply could not have been the intended effect of the regulation.

Further, the fact that the Veteran's GERD is diagnosed is not fatal to her service-connection claim under subsection (a)(2)(ii) because a disability can still be a MUCMI if it is diagnosed. *See* 38 C.F.R. § 3.317(a)(2)(ii). Finally, the Secretary's plain meaning argument would render subsection (a)(2)(ii) superfluous with respect to gastrointestinal disabilities in Persian Gulf veterans, as they would never be able to utilize subsection (a)(2)(ii) to meet the definition of a MUCMI. A regulation must be interpreted "upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). *See Hornick v. Shinseki*, 24 Vet.App. 50, 55-56 (2010) (each part or section of a regulation should be construed in connection with every other part or section so as to produce a harmonious whole). If there

[2] Assuming qualifying service in the Persian Gulf. *See* 38 C.F.R. § 3.317(a)(1).

is a way to read the regulation that is more beneficial to the veteran—which here would be to allow GERD to be considered a MUCMI under (a)(2)(ii)—then that is the appropriate application. *See*, *c.f.*, *Trafter v. Shinseki*, 26 Vet.App. 267, 272 (2013).

The Court should provide the proper interpretation of the regulation and vacate and remand the Board's decision for a new decision consistent with its provided interpretation.

> *b. The Veteran's GERD does not have a partially understood etiology. Furthermore, her disability is characterized by overlapping symptoms and signs, has features including inconsistent demonstration of laboratory abnormalities, and is out of proportion to her physical findings.*

The Secretary argues that even if GERD could be considered a MUCMI under subsection (a)(2)(ii), Ms. Atencio's GERD is not a MUCMI because it is of partially understood etiology, is not out of proportion to her physical findings, and does not have inconsistent demonstrations of laboratory abnormalities. Sec. Br. at 11-12.

As noted in the opening brief, the Board did not cite any determinative evidence as to the etiology of the Veteran's GERD. Apa. Open. Br. at 8; R-6-11. A review of the medical evidence fails to provide this information. The VA examination the Board relied upon rules out possible causes without any explanation as to the etiology or cause of the GERD. *See* R-173-82.

The Secretary provides no argument or citations to relevant evidence explaining why the Veteran's GERD has a partially understood etiology. Sec. Br. at 11-12. The dictionary definition provided has no bearing on the case. Sec. Br. at 11. Initially, the definition the Secretary provides does not explain the etiology of a GERD disability at all, only the symptoms and effects of the condition. *See id.* Further, the question is not what causes GERD in general, but rather what causes or caused this Veteran's GERD. *See* 75 Fed. Reg.

61995-07, 61996 (whether a disability is a MUCMI is decided on a case-by-case basis). Finally, the Secretary's citations to the medical dictionary are insufficient, as the etiology of a disability is a medical question, a determination neither the Board not the Secretary is allowed to make. Sec. Br. at 11; *see Colvin v. Derwinski*, 1 Vet.App. 171, 172 (1991).

The Veteran did explain why her GERD disability may have met the requirements of a MUCMI under subsection (a)(2)(ii), contrary to the Secretary's argument. Apa. Open. Br. at 8-9. *See* Sec. Br. at 11-12. The Veteran's symptoms include epigastric distress, R-178, a hiatal hernia, R-1423; R-321, esophageal erosion, R-1209 (1209-10), mildly thickened mucusoal wall of the colon, R-239 (239-40), and severe gastroesphogeal reflux. R-227. Ms. Atencio had coughing and shortness of breath related to her GERD. R-537-38. She also had pain in the area of the xiphoid. R-538. Further, Ms. Atencio has described shortness of breath, coughing, and pain coinciding with her GERD symptoms. R-297 (197-98); R-449-57; R-537-38; R-703-04 (683-710). Her condition is therefore marked by a variety of overlapping symptoms, inconsistent demonstration of laboratory abnormalities, and physical findings that are disproportionate to the disability, satisfying the requirements of subsection (a)(2)(ii).

All this aside, it is for the Board to consider these symptoms and whether the Veteran's GERD has unknown etiology or pathophysiology, and to apply the regulation correctly. In its decision, it failed to consider whether the Veteran's GERD met the definition of a MUCMI under subsection (a)(2)(II) because it misinterpreted the regulation and improperly found that GERD could never be a MUCMI under 38 C.F.R. § 3.317. As explained above, this is incorrect. *See*, *supra* Part I. This renders all of the arguments the

Secretary presented in his brief on this issue a *post hoc* rationalization for the Board's decision. *See Martin v. Occupational Safety & Health Review Comm'n*, 499 U.S. 144, 156 (1991). The arguments therefore should be rejected. *Id.*

II. The Court is not precluded from considering the argument that the Board's error in adjudicating the issue of direct and secondary service connection for the Veteran's GERD.

The Secretary's law of the case argument is legally untenable because this case has never been subject to a decision by an appellate court. *See Browder v. Brown*, 5 Vet.App. 268 (1993). On that basis, *Browder* is distinguishable from this case. *Id.* at 271. In *Browder*, the Board issued a decision on remand that denied a service connection claim based on a rationale the Court explicitly rejected in a prior memorandum decision. *See id.* Applying the law of the case doctrine, the Court held the Board decision was made in error, as it was in conflict with the prior binding appellate decision. *See id.*

The law of the case doctrine does not apply here because, as the Secretary concedes, the prior appeal was disposed of by joint motion for remand ("JMR") and not an appellate decision. *See* R-16-20; Sec. Br. at 13. A JMR has the effect of mooting the case or controversy before the Court. *Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992). The JMR "does not evaluate and adjudicate the arguments or positions of the parties prior to the disposition on the merits, but merely dismisses the appeal." *Breeden v. Principi*, 17 Vet.App. 475, 479 (2004). Therefore, the Clerk's Order granting the JMR is "administrative rather than adjudicative." *Id.* Because the law of the case doctrine does not apply to administrative orders, but only to judicial decisions, the content of the JMR does not represent the law of the case. *See Pepper v. United States*, 562 U.S. 476, 506 (2011) (holding the law of the case

doctrine "posits that *when a court decides upon a rule of law*, that decision should continue to govern the same issues in subsequent stages in the same case") (emphasis added).

Alternatively, if the Court holds the law of the case doctrine controls, it should not use its discretion to apply it because to do so would be inconsistent with substantial justice. *Hudson v. Principi,* 260 F.3d 1357, 1362-63 (2001). As pled in the opening brief, the Board erred when it denied service connection for the Veteran's GERD on both a direct and a secondary basis as it relied on an inadequate 2014 medical examination and provided an inadequate statement of reasons or bases. Apa. Open. Br. at 9-18. The rigid application of the doctrine would be inconsistent with substantial justice because if not for the Board's errors, the Veteran may have been found entitled to service connection and benefits.

Further, *Carter* does not bar the Court from considering the arguments presented. Sec. Br. at 14-15; *see Carter v. Shinseki*, 26 Vet.App. 534 (2014). The JMR vacated and remanded the entirety of the Board's March 30, 2015 decision. R-16. It did not affirm any part of the Board's decision or analysis. *See* R-16-20. Further, the JMR did not limit the Board's review on remand, but quite the opposite: it directly instructed the Board "to conduct a critical examination of the justification for its previous decision," citing *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991). R-18. It also instructed the Board to "reexamine the evidence of record, seek any other evidence the Board feels is necessary, and issue a timely, well-supported decision[.]" *Id.* (citing *Fletcher*, 14 Vet.App. 397).

Contrary to the Secretary's position, precluding the Veteran from bringing his argument before the Court would also be contrary to the policy this Court endorses to "not [ ] discourage joint motions for remand" and to "understand[ ] and appreciate[ ] their

importance." *Carter*, 26 Vet.App. at 547. Sec. Br. at 14-15. Joint motions for remand are "effective tool[s] for identifying errors and speedily and efficiently resolving a veteran's claim." *Carter*, 26 Vet.App. at 541. The 2015 joint motion for remand was negotiated at the pre-briefing conference stage, and the Court therefore has yet to adjudicate the Veteran's claim. *See* R-19-20. The issue on appeal has always been service connection for the Veteran's GERD. Here, the Veteran's interest is best served by a thorough examination of the record and outweighs any interest of VA to the contrary because this is not a "relatively unique theory" of entitlement but instead is encompassed within his original service connection argument. *Massie v. Shinseki*, 25 Vet.App. 123, 127 (2011).

In light of the explicit language within the prior joint motion for remand that the Board was required to re-examine the evidence of record, seek any additional information necessary, and issue a new decision, the Veteran should not be estopped from raising his claim before this Court. R-16-20; *Carter*, 26 Vet.App. at 543; *Fletcher*, 1 Vet.App. at 397.

Finally, the Board decision on appeal contained some new analysis with respect to the 2014 medical examination (that was not in the March 2015 Board decision), and the Veteran's representative submitted additional argument in a February 2016 90-day response letter.[3] *Compare* R-10-11 *with* R-100-101 (94-104). *See* R-11 (Board noting that the Veteran's attorney submitted a brief in February 2016); R-28-30 (90-day letter response). The brief was the first opportunity Appellant's counsel had to attack the Board's new analysis with respect to the adequacy of the 2014 examination. *Compare* R-10-11 *with* R-100-101. Further,

[3] The Court refers to the 90-day response as a brief. *See* R-10. There are no briefs in the record filed in February 2016.

the brief was Appellant's counsel's first opportunity to attack the Board's reasons and bases for denying service connection based on the 2014 examination despite the arguments presented in the February 2016 90-day response letter. R-28-30. The fact that the 90-day response argued the examination was inadequate demonstrates the adequacy of the examination was still at issue. This weighs in favor of the Court considering parts II and III of the Veteran's opening brief. Apa. Open. Br. at 9-19.

III. The Board erred when it denied direct and secondary service connection for the Veteran's GERD.

a. Direct service connection.

The Veteran's argument does not amount to mere disagreements with the 2014 examiner's medical judgment. Sec. Br. at 16. Rather, the examiner's negative nexus opinion lacked an adequate supporting rationale. Apa. Open. Br. 16-24. The Veteran did not ask the examiner to lay out her journey from the facts to a conclusion, contrary to the Secretary's argument. Sec. Br. at 16. Using that metaphor, the examiner did not recount a single stop on her trip.

The examiner's rationale for denying service connection for the Veteran's GERD on a direct basis was:

> The service record is silent for symptoms or history of esophageal reflux. There are numerous medical records for other conditions after service, however the record is silent for report of symptoms related to heartburn, esophageal reflux or dyspepsia until 1998, several years after service. The specialist Gastroenterologist and Surgeon reports do NOT relate esophageal symptoms to esophageal symptoms to service. Records show she was first empirically treated for probable gastroesophageal reflux (with Prilosec) for an unknown period of time beginning in June 1998. There is no evidence of esophagitis or esophageal erosions until the Endoscopy in January 1999. . . . At the present time, there is Insufficient Evidence to determine whether an association exists

> between between [sic] deployment to the Gulf and Structural gastrointestinal diseases.

R-175. This is not a rationale, but rather just a list of facts. *See id.* The probative value of an examiner's opinion lies in the reasoned explanation connecting the conclusion to the supporting data. *Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008). Here, this opinion does not provide a sufficient rationale, or a reasoned explanation, as to why service connection for the Veteran's GERD was not warranted. *See* R-175.

The Secretary's response to this argument is largely comprised of a summary of the examiner's opinion. Sec. Br. at 17-24. The point made in the opening brief is that none of the so-called rationale provided by the 2014 examiner was sufficient for the Board to rely upon to deny service connection. *See* R-175.

The fact of the matter is, despite the Secretary's insistence, we do not know if the examiner relied on the National Academy of Sciences' ("NAS") finding that there is insufficient evidence of an association between service in the Persian Gulf and structural gastrointestinal disabilities as the sole basis for providing a negative nexus opinion. Sec. Br. at 18-20. The examiner only listed the facts of the case, the fact about the NAS report, and provided a negative nexus opinion. *See* R-175. If the examiner relied upon the fact that there is no presumption for the Veteran' GERD to support her negative nexus opinion, that reliance would render the examination report inadequate on its face. *Polovick v. Shinseki*, 12 Vet.App. 48, 55 (2009); *Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007). *See* Apa. Open. Br. at 14-16.

Further, the 2014 examiner failed to provide sufficient rationale as to why the delayed diagnosis of GERD was fatal to a positive nexus opinion. Apa. Open. Br. at 12-13. The

Secretary attempts to provide an explanation for the examiner's reliance on this fact, but does so by listing another fact that the examiner noted in her opinion. Sec. Br. at 22. Facts by themselves are not a sufficient rationale as to why a delayed diagnosis was relevant to the negative nexus opinion. The examiner provided no medical reason why the Veteran's delayed diagnosis of GERD weighed in favor of a negative nexus opinion. *See* R-175.

Finally, the lack of a prior positive nexus opinion is irrelevant to whether the Veteran's GERD, in the 2014 examiner's opinion, was related to the Veteran's service. Apa. Open. Br. at 13-14. In fact, prior positive nexus opinions may have rendered the 2014 examination unnecessary. The 2014 examiner provided no rationale as to why the provider notes should be expected to contain positive nexus opinions. R-175. It is unclear why treatment records would contain nexus information. The physicians who diagnosed the Veteran with GERD were not doing so with the elements of service connection in mind. In response to this argument, the Secretary provides an explanation for the examiner's negative nexus opinion that does not appear in the report—that the GERD diagnosis seven years after service indicates no nexus. Sec. Br. at 23. It is for the examiner, not the Secretary, to provide a sufficient rationale for her opinion. *Nieves-Rodriguez*, 22 Vet.App. at 301. It is for the Board, not the Secretary, to provide an adequate statement of reasons or bases for its decision. 38 U.S.C. § 7104. Remand is required for the Board to obtain an adequate medical opinion on the issue of direct service connection. 38 U.S.C. § 5103A.

b. Secondary service connection.

The Secretary again suggests the Veteran's argument, that the 2014 examination report was insufficient because it failed to adequately opine on the issue of aggravation, is

merely a disagreement with the examiner's medical judgment. Sec. Br. at 24-27. This is not the case. Apa. Open. Br. at 17-19.

The examiner found that the Veteran's sinusitis did not cause or aggravate the Veteran's GERD because:

> Although conditions of asthma and sinusitis are known to develop as a result of esophageal reflux, evidence-based medical literature does not show that CHRONIC or RECURRENT SINUSITIS commonly results in or aggravates a condition of GERD. At the interview for this report, the veteran recalled the chronology of condition as FIRST sinusitis, followed by symptoms of asthma, followed by symptoms of acid reflux, then a diagnosis of esophageal erosions/GERD. Of note: She reports she did NOT have any improvement in her sinus or asthma symptoms following surgical treatment of the GERD condition.

R-175 (emphasis in original). The examiner also noted that GERD has been associated with several extraesophageal complications including asthma, chronic cough, and chronic sinusitis. *Id.* Since GERD is so common, "it may simply be a coexisting condition without a causal relationship." *Id.*

The problem with this rationale is that her explanations can, at best, only be inferred. R-175. The examiner provided no rationale connecting the facts to the examiner's medical knowledge and conclusion. *See* R-175.

The fact that GERD is so common that it *may* be a coexisting condition without a causal relationship, which the Secretary cites as evidence in support of his argument that the examination is adequate, does not speak to whether Ms. Atencio's GERD is aggravated by her service-connected sinusitis. Sec. Br. at 25.

The medical text the examiner cites only notes that GERD has been associated with extraesophageal complications including asthma, chronic cough, and chronic sinusitis. R-

175. That medical text in fact supports a finding that there is an association between the Veteran's service-connected sinusitis and her GERD. It does not support the conclusion the examiner drew from the text: that GERD can develop from asthma, chronic cough, and chronic sinusitis, but not the other way around. R-175. *See* Sec. Br. at 26.

Remand is required for the Board to obtain an adequate medical examination on the issue of aggravation. 38 U.S.C. § 5103A; *El-Amin v. Shinseki*, 26 Vet.App. 136, 140 (2013).

CONCLUSION

GERD is not categorically precluded from being a MUCMI. The Board misinterpreted the regulation when it decided otherwise. The plain language of the regulation demonstrates that GERD can be a MUCMI if it is diagnosed but is without a conclusive pathophysiology or etiology. The legislative history of the regulation also supports this reading. If the Secretary is correct that the plain language of the regulation supports his reading, it should be rejected, as it would lead to an absurd result.

Here, the Veteran's GERD should have been considered a MUCMI because it does not have a conclusive pathophysiology or etiology. Her GERD is also marked by a variety of overlapping symptoms, inconsistent demonstration of laboratory abnormalities, and physical findings that are disproportionate to her disability, satisfying the requirements of subsection (a)(2)(ii). The Court should provide the proper interpretation of the regulation and vacate and remand the Board's decision for a new decision consistent with the correct interpretation.

Further, this Court should consider the arguments presented that the Board erred when it denied direct and secondary service connection for the Veteran's GERD. The law

of the case doctrine does not apply as this case has never been subject to a decision of an appellate Court. The Clerk's grant of a JMR is not the same as a decision from an appellate Court.

Alternatively, if the Court holds the law of the case doctrine controls, it should not use its discretion to apply it because to do so would be inconsistent with substantial justice, as the Board erred when it denied Ms. Atencio service connection for her GERD. Further, *Carter* does not bar the Court from considering the arguments presented. The JMR vacated and remanded the entirety of the Board's March 30, 2015 decision. Additionally, the Board decision on appeal contained new analysis with respect to the 2014 medical examination, and new argument was submitted on remand in a February 2016 90-day response letter.

Finally, the Board erred when it relied on the inadequate 2014 VA examination report to deny direct service connection and secondary service connection for the Veteran's GERD. The Veteran's argument does not amount to mere disagreements with the 2014 examiner's medical judgment. Rather, the examiner's negative nexus opinion lacked an adequate supporting rationale. Remand is required for the Board to obtain an adequate VA examination in this case.

Respectfully submitted,

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