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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 16-3961

LLOYD T. DeCENT, APPELLANT,

v.

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

Before ALLEN, *Judge*.

MEMORANDUM DECISION

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

ALLEN, *Judge*: Appellant Lloyd DeCent appeals through counsel an October 25, 2016, Board of Veterans' Appeals (Board) decision denying him entitlement to an effective date earlier than April 27, 2010, for service connection for ischemic heart disease. This appeal is timely and the Court has jurisdiction pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). As explained below, the Court will affirm the October 25, 2016, Board decision in part, and remand, in part, for further development.

I. ANALYSIS

Appellant served honorably in the United States Army from September 1968 to September 1971, including combat service in the Vietnam War. Record (R.) at 536. On March 24, 2006, he sent a letter to VA stating, "I went to the VA clinic . . . [and] they put a[n] ECG [(electrocardiogram)] monitor on me . . . I think it was to check my heart." R. at 3157. VA took no action on this letter at that time. In June 2010, appellant was diagnosed with ischemic heart disease (IHD). On October 4, 2011, VA granted appellant service connection for IHD, rated at 60% disabling, with an effective date of August 31, 2010. R. at 2274. This effective date corresponds with regulation changes that added IHD as a presumptive condition related to herbicide exposure

under 38 C.F.R. § 3.309. In a December 2011 rating decision, VA readjudicated appellant's claim after conceding that it made a clear and unmistakable error by not recognizing his 2006 letter as a claim for IHC, which would give him an earlier effective date. R. at 2225–28. The resulting decision granted appellant service connection for IHD rated at 10% disabling effective April 27, 2010, (the first VA diagnosis of IHD) and 60% disabling effective August 24, 2011, (the date of his post-surgical exam). *Id.*

Appellant asserts that the October 2016 Board decision is erroneous because VA violated its duty to assist under 38 U.S.C. § 5103A(a)(1) when it failed to help him obtain evidence necessary to substantiate his claim. Appellant's Brief (Br.) at 5–7. Specifically, he argues that the medical examinations of record are not adequate because the examiners were asked to determine the onset of ischemic heart disease (IHD), instead of the earliest possible onset of a broader, unspecified heart condition, as claimed in 2006. *Id.* In the alternative, appellant argues that the Board lacked adequate reasons and bases for limiting the examiners to that narrow question and for finding the medical evidence adequate to adjudicate his full claim. *Id.* at 11. Finally, appellant makes an argument that his March 24, 2006 claim for service connection was never actually adjudicated and "simply remained pending." Appellant's Br at 1, 7.

In response, the Secretary maintains that the medical evidence is sufficient to comply with section 5301A because there is no evidence of record that appellant suffered from anything other than IHD. Secretary's Br. at 10. Furthermore, the Secretary argues that IHD is a broad diagnosis that encompasses alternative heart conditions and one that required the examiner to consider appellant's entire medical history. *Id.* at 9–11.

The first issue to untangle is appellant's assertion that his original March 2006 claim remained pending and was never adjudicated. The procedural history indicates that VA, in a December 2011 rating decision, construed appellant's March 2006 letter as a claim for service connection for IHD. That claim was adjudicated in the December 2011 rating decision and resulted in a grant of service connection for IHD. Thus, it did not remain pending. Appellant may disagree with VA's construal of the scope of his claim, but that does not mean that VA failed to make a rating decision. Any argument to the contrary is merely a reiteration of the argument that VA failed to assist him in developing the evidence necessary to substantiate service connection for the earliest onset of an alternative heart condition, a matter the Court turns to below.

One would assume we would next move to discuss IHD. However, there is not much to do in that regard because appellant makes almost no argument as to why he is entitled to an earlier effective date for service connection for IHD. The Board held that, "[appellant] does not contend[] that he has claimed service connection for [IHD] prior to March 2006. Further, the claims folder reflects that prior to April 2010; the Veteran had not been diagnosed with [IHD]." R. at 7. Indeed, appellant conceded in the August 2011 examination that he was first diagnosed with IHD in 2010, a September 2014 examination found that appellant first presented evidence of IHD in 2010, and a March 2016 addendum found that IHD first manifested in 2010. The Court has reviewed the record and concludes that the Board did not err. Accordingly, the Court will affirm the Board's decision denying appellant entitlement to an earlier effective date for IHD.

However, there is more to this story. The Court understands appellant's main disagreement with the decision to be that VA inadequately assisted him in developing his complaints of chest and heart pain that pre-dated his diagnosis of IHD. In other words, the real issue on appeal is VA's failures related to heart conditions *other than* IHD. The Court agrees with appellant that VA erred in this context. The Board "found nothing to suggest that there is any outstanding evidence with respect to [appellant's] claims for which VA has a duty to obtain." R. at 5. The problem with this finding is that the Board limited itself to IHD alone, the specific condition appellant was diagnosed with four years after filing his claim. As the Court will explain, VA's obligation was to look beyond that condition and assist appellant appropriately.

Under the duty to assist, 38 U.S.C. § 5103A(a)(1), VA is required to "make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit." This entails a full and sympathetic development of appellant's entire claim. *Szemraj v. Principi*, 357 F.3d 1370, 1373 (Fed. Cir. 2004). When a claimant files a claim for compensation, it is not "to receive benefits only for a particular diagnosis, but for the affliction his [physical] condition, whatever that is, caused him." *Clemons v. Shinseki*, 23 Vet.App. 1, 5 (2009) (per curiam). When making a claim, "a claimant is not expected to have medical expertise and generally 'is only competent to identify and explain the symptoms that he observes and experiences.'" *DeLisio v. Shinseki*, 25 Vet.App. 25, 53 (2011) (quoting *Clemons*, 23 Vet. App. at 5).

Furthermore, the Board is required to consider all claims reasonably raised by the evidence of record, including the claimant's lay testimony. *Robinson v. Peake*, 21 Vet.App. 545, 552 (2008), (*aff'd*, *Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009)). This includes consideration of

contradictory or alternative claims that differ from the originally claimed condition. Indeed, this Court has held that "multiple medical diagnoses or diagnoses that differ from the claimed condition do not necessarily represent wholly separate claims." *Clemons*, 23 Vet.App. at 4. The Board must liberally construe veterans' arguments for the purposes of determining the issues raised. *Robinson*, 557 F.3d at 1361; 38 C.F.R. § 20.202 (2017). Additionally, the Board must support its determination that VA satisfied its duty to assist with an adequate statement of reasons or bases. See *Trafter v. Shinseki*, 26 Vet.App. 267, 282–83 (2013); *Daves v. Nicholson*, 21 Vet.App. 46, 51 (2007).

The Court holds that the medical evidence of record does not address the full scope of appellant's claim, rendering VA's assistance to the veteran inadequate under section 5301A. 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. See *Schroeder v. West*, 212 F.3d 1265, 1271 (Fed. Cir. 2000); *Robinson*, 21 Vet.App. at 552 (characterizing *Schroeder* as holding that "the duty to assist applies to the entire claim, which might require assistance in developing more than one theory in support of that claim"); see also *Roberson v. Principi*, 251 F.3d 1378, 1384 (Fed. Cir. 2001); *Brokowski v. Shinseki*, 23 Vet.App. 79, 85 (2009). Overall, the scope of a claim is based on a sympathetic assessment of "the claimant's description of the claim; the symptoms the claimant describes; and the information the claimant submits or that the Secretary obtains in support of the claim," i.e., the information gathered upon investigation. *Clemons*, 23 Vet.App. at 5.

The information gathered in this matter indicates that the scope of appellant's claim goes beyond IHD. The September 2014 examination report noted that "appellant has had vague complaints for many years," but "[t]he absolute proof that ischemia presented itself was noted on [] April 28, 2010." R. at 756. Similarly, in the March 2016 examination addendum, the examiner noted that appellant had complaints of chest pain prior to his diagnosis of IHD, stating:

[Appellant] had diagnosis and ischemic heart disease first manifest in 2010 with the stent placement. Patient had chest pain prior to this (e.g. in 2002), but this could have been due to other reasons. In addition, stress testias [*sic*] normal in 2008 suggesting no ischemic heart disease at that point[].

R. at 156.

Based on these two statements alone, it is apparent that the medical examinations were inadequate in scope insofar as they did not address the nature of these other complaints. The "other

reasons" alluded to by the examiner could very well be conditions other than IHD for which appellant is entitled to compensation. VA has a duty to develop the full scope of appellant's claim; however, to date, there has been no VA medical examination to determine the nature and etiology of his complaints of chest pain during the period prior to his IHD diagnosis—other than to determine whether these complaints constituted IHD.

Although the Secretary argues that "there is no evidence the examiners 'limited their opinions to [IHD],' deliberately neglecting to consider alternative, earlier diagnoses of heart disease," the examiners' own findings indicate otherwise. Secretary's Br. at 9 (quoting Appellant's Br. at 8). The examiners' attribution of appellant's early complaints of chest pain to *something other than* IHD without exploring this point is precisely a failure to consider alternative theories of compensation. Appellant's documented symptoms from before 2010 must be fully developed to determine if he is entitled to additional compensation. Although he may not be entitled to an earlier effective date for IHD, VA is still required to assist in developing the entirety of his claim. This was not done due to VA's focus purely on evidence of IHD and, therefore, remand for further development is warranted here.

II. CONCLUSION

After a review of the record and consideration of the parties' briefs, the Court AFFIRMS the Board's denial of an earlier effective date for entitlement to service connection of ischemic heart disease and REMANDS the matter for further development consistent with this decision.

DATED: December 12, 2017

Copies to:

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