

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

REYES PEREGRINO,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 17-1078
)	
DAVID J. SHULKIN,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

JOINT MOTION FOR REMAND

Pursuant to U.S. Vet. App. R. 27 and 45(g), Appellant, Reyes Peregrino, and Appellee, the Secretary of Veterans Affairs, David J. Shulkin, through counsel, move the Court to vacate the December 30, 2016, Board of Veterans' Appeals (Board) decision that denied entitlement to service connection for an acquired psychiatric disorder, to include post-traumatic stress disorder (PTSD).

BASIS FOR REMAND

The parties agree that vacatur and remand of the decision on appeal are warranted because the Board erred by failing to provide an adequate statement of reasons or bases for finding Appellant did not have an acquired psychiatric disorder related to service.

Under 38 U.S.C. § 7104(d)(1), Board decisions must contain "a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented

on the record.” “[T]hat statement must be adequate to enable an appellant to understand the precise basis for the Board’s decision, as well as to facilitate informed review in this Court.” *Donnellan v. Shinseki*, 24 Vet.App. 167, 171 (2010).

VA has a duty to assist a claimant in the adjudication of his claims under which VA must “make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant’s claim for a benefit.” 38 U.S.C. § 5103A(a)(1). VA’s duty to assist includes providing a medical examination when there is (1) competent evidence of a current disability or persistent or recurrent symptoms of a disability; (2) evidence establishing that an event, injury, or disease occurred in service; and (3) an indication that the disability or persistent symptoms of disability may be associated with the Veteran’s service; but (4) insufficient competent medical evidence for VA to make a decision on the claim. See *McLendon v. Nicholson*, 20 Vet.App. 79, 81 (2006). The Court has held that the third element, whether the evidence “indicates” that a disability “may be associated” with service, is a “low threshold.” *Id.* at 83. When VA provides a medical examination or opinion, that examination or opinion must be adequate for adjudication purposes. See 38 C.F.R. § 4.2 (providing that if an examination report “does not contain sufficient detail, it is incumbent upon the rating board to return the report as inadequate for evaluation purposes”); see also *Bowling v. Principi*, 15 Vet.App. 1, 12 (2001).

In this case, Appellant has been diagnosed with various psychiatric illnesses throughout the appeal period, including depressive disorder. See [Record (R.) at 83, 92] (VA treatment records noting diagnoses of unspecified anxiety disorder, “unspecified trauma and stressor related” disorder/rule out PTSD, major depressive disorder, cannabis use disorder, and alcohol use disorder); [R. at 10-11] (Board decision conceding Appellant has been diagnosed with depressive disorder and anxiety disorder). In April 2016, a VA treating doctor opined that “significant readjustment out of the military, [and] exposure to trauma in the military are reported to contribute to his [mental health] complaints.” [R. at 88].

However, despite conceding that Appellant has been diagnosed with depressive disorder, the Board failed to address whether there is any evidence relating that disorder to service. The parties note that, although Appellant has been provided two VA psychiatric examinations, neither of these examinations specifically address whether he has depressive disorder or whether any diagnosed depressive disorder is related to service. See [R. at 700-06] (December 2009 VA examination); [R. at 58-69] (September 2016 VA examination).

In light of the above, the parties agree that the Board’s decision frustrates judicial review. The parties agree that remand is warranted, and on remand, the Board must discuss whether there is any evidence that Appellant’s diagnosed depressive disorder is related to his service and whether additional development,

to include an additional VA examination, is needed for the Board to properly adjudicate that issue.

The parties agree that this joint motion and its language are the product of the parties' negotiations. The Secretary further notes that any statements made herein shall not be construed as statements of policy or the interpretation of any statute, regulation, or policy by the Secretary. Appellant also notes that any statements made herein shall not be construed as a waiver as to any rights or VA duties under the law as to the matters being remanded.

On remand, Appellant will be free to submit additional evidence and argument on the questions at issue, and the Board may "seek other evidence it feels is necessary" to the resolution of Appellant's claim. *Kutscherousky v. West*, 12 Vet.App. 369, 372 (1999). Before relying on any additional evidence developed, the Board should ensure that Appellant is given notice thereof, an opportunity to respond thereto, and the opportunity to submit additional argument or evidence. See *Austin v. Brown*, 6 Vet.App. 547 (1994); *Thurber v. Brown*, 5 Vet.App. 119 (1993).

On remand, the Board is obligated to conduct a critical examination of the justification for its previous decision. See *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991). If the Court grants this motion, the Board shall obtain copies of this motion and the Court's order, and incorporate them into Appellant's claims file. The Board shall provide this claim expeditious treatment, as required by 38 U.S.C. § 7112.

CONCLUSION

WHEREFORE, the parties request that the Court enter an order vacating the December 30, 2016, Board decision that denied entitlement to service connection for an acquired psychiatric disorder and remanding the matter in accordance with the above discussion.

Respectfully submitted,

FOR APPELLANT:

1/22/2018
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