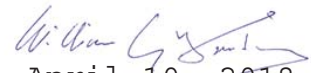


**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

RAYMOND N. MOUNTFORD,)
)
Appellant,)
)
v.)
)
ROBERT L. WILKIE,)
Acting Secretary of Veterans Affairs,)
)
Appellee.)

Vet. App. No. 18-0346

MOTION GRANTED


April 10, 2018

William Greenberg
Judge

JOINT MOTION FOR REMAND

Pursuant to U.S. Court of Appeals for Veterans Claims Rules 27(a) and 45(g), Appellant, Raymond N. Mountford, and Appellee, Robert L. Wilkie, Acting Secretary of Veterans Affairs, by and through their respective counsel, respectfully move this Court to issue an order vacating and remanding the October 16, 2017, Board of Veterans' Appeals (Board) decision that denied entitlement to waiver of overpayment of VA compensation in the amount of \$9,951.00 based on a change in dependents, to include whether the overpayment was validly created. [Record (R.) at 2-9].

BASIS FOR REMAND

The parties agree that vacatur and remand of the relevant part of the Board's decision is required because the Board erred when it provided an inadequate statement of reasons or bases for its decision in violation of 38 U.S.C. § 7104(d). The Board must provide "a written statement of [its] 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.” 38 U.S.C. § 7104(d)(1).

When determining whether an overpayment should result in a debt that needs to be repaid, or whether such debt should be waived, the Secretary shall determine whether the “recovery would be against equity and good conscience[.]” 38 U.S.C. § 5302; 38 C.F.R. § 1.962; 38 C.F.R. § 1.963(a).

In the instant case, the Board correctly noted that Appellant did not timely inform VA regarding his wife Mary’s death, [R. at 1624 (Mary’s December 2005 death certificate)], or his subsequent marriage to Evelyn, [R. at 1625 (January 2007 marriage certificate)]. [R. at 6-7]. The Board determined that because Appellant did not timely notify VA regarding the change in his dependents, the overpayment created was lawful, and recovery of the overpayment did “not violate the principles of equity and good conscience.” [R. at 6-9].

The parties agree, however, that the Board provided an inadequate statement of reasons or bases because it failed to consider whether at least a partial waiver was warranted in this case. More specifically, the parties note that while Appellant was receiving dependents benefits for Mary for many years after her death, for all but one of those years (January 2006 through January 2007), he did have a valid spouse, for whom he *could have been* receiving dependents benefits, had he informed VA accurately regarding his dependents. On remand, the Board should consider whether “the principles of equity and good

conscience” require at least a partial waiver of the overpayment of \$9,951.00, considering Appellant’s actual marital status during the years in question.

The parties expressly agree to clearly and unequivocally waive the right to reconsideration, panel decision, or Full Court review, or appeal to the U.S. Court of Appeals for the Federal Circuit, only as to the matters at issue in this instant appeal. If the Court grants this Joint Motion, the parties respectfully request that the Court enter judgment and mandate contemporaneously with its Order. See *Bly v. Shulkin*, 883 F.3d 1374 (Fed. Cir. 2018).

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 matter being remanded.

On remand, Appellant is entitled to submit additional evidence and argument, *Kutscherousky v. West*, 12 Vet.App. 369, 372 (1999) (per curiam order), and VA is obligated to conduct a critical examination of the justification for the decision, *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991). The Board must also “reexamine the evidence of record, seek any other evidence the Board feels is necessary, and issue a timely, well-supported decision in this case.” *Fletcher*, 1 Vet.App. at 397. In any subsequent decision, the Board must set forth adequate reasons or bases for its findings and conclusions on all material issues

of fact and law presented on the record. See 38 U.S.C. § 7104(d)(1); *Gilbert*, 1 Vet.App. 49, 57 (1990). Further, the Board shall obtain copies of the Court's Order, and this motion, and incorporate them into Appellant's claims folder for appropriate consideration in subsequent decisions on this claim. The Court has noted that a remand confers on the Appellant a right to VA compliance with the terms of the remand order and imposes on the Secretary a concomitant duty to ensure compliance with those terms. See *Stegall v. West*, 11 Vet. App. 268, 271 (1998).

WHEREFORE, the parties respectfully move this Court to issue an order vacating and remanding the October 16, 2017, Board decision that denied entitlement to waiver of overpayment of VA compensation in the amount of \$9,951.00 based on a change in dependents, to include whether the overpayment was validly created.

Respectfully submitted,

FOR APPELLANT:

DATE: 4/6/2018

/s/ Raymond J. Kim

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