

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

ALAN D. GOODMAN,)	
Appellant,)	
)	
v.)	Vet.App. No. 17-3247
)	
ROBERT L. WILKIE,)	
Acting Secretary of Veterans Affairs,)	
Appellee.)	

JOINT MOTION FOR PARTIAL REMAND

Pursuant to U.S. Vet.App. Rules 27 and 45(g), the parties respectfully move the Court to vacate, in part, and remand the June 7, 2017, decision of the Board of Veterans' Appeals (Board), to the extent that it denied entitlement to service connection for right and left knee disabilities. For the purposes of this motion, the Secretary concedes that remand of the aforementioned issue is warranted on the basis of administrative error.

The Board also denied entitlement to service connection for a right elbow disability. Appellant raises no arguments with that decision. As such that claim has been abandoned. *Cacciola v. Gibson*, 27 Vet.App. 45, 47 (2014) (holding that when Appellant expressly abandons an appealed issue or declines to present arguments as to that issue, Appellant relinquishes the right to judicial review of that issue and the Court will not decide it).

BASIS FOR REMAND

The parties agree that remand of the issues of entitlement to service connection the right and left knee disabilities is warranted. Here, the Board denied both claims, reasoning in part that there was no diagnosis or manifestations of arthritis in either knee within one year of separation from active duty such that presumptive service connection for chronic disabilities was not warranted. Record (R.) at 12 (1-17). The Board erred when it did not consider whether Appellant's right and left knee disabilities were related to service based on a continuity of symptomatology. 38 C.F.R. § 3.303(b) (2017); see *Schafrath v. Derwinski*, 1 Vet.App. 589, 593 (1991) (requiring the Board to acknowledge and consider potentially application VA regulations in its decision). This is so despite the Board recognizing that Appellant reported of experiencing knee pain since August 2006, while in service. R. at 10 (1-17). Indeed, the Board should have discussed this theory of entitlement after acknowledging that Appellant reported knee pain in service, which started in 2006, and continued after service, in January 2011, March 2011, and May 2012. R. at 10-11 (1-17); see R. at 170 (Form DD-214 showing separation from service in October 2006). Therefore, remand is warranted for the Board to reevaluate the evidence of record and determine whether service connection is warranted for Appellant's right and left knee disabilities based on a continuity of symptomatology.

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 and VA duties under the law as to the matters being remanded.

On remand, Appellant shall be free to submit additional evidence and/or argument in support of his claims. *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 and an opportunity to respond thereto. *Austin v. Brown*, 6 Vet.App. 547, 551 (1994); *Thurber v. Brown*, 5 Vet.App. 119, 126 (1993). And 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. 38 U.S.C. § 7104(d)(1); *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990).

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 v. Derwinski*, 1 Vet.App. 394, 397 (1991). The Board is further directed to obtain copies of the Court's order and of this motion and to incorporate them into Appellant's file for appropriate consideration in subsequent decisions on these claims. As stated in *Forcier*, the terms of a joint

motion for remand granted by the Court are enforceable. *Forcier v. Nicholson*, 19 Vet. App. 414, 425 (2006) (“We further hold that the Board has a duty under *Stegall* to ensure compliance with the terms of the agreement struck by the parties, which form the basis for the ‘remand order’ even if they are not incorporated explicitly”).

Finally, the Secretary “shall take such actions as may be necessary to provide for the expeditious treatment” of these claims. 38 U.S.C. §§ 5109B, 7112.

CONCLUSION

WHEREFORE, the parties move the Court to vacate in part the June 7, 2017, Board decision, only to the extent that it denied entitlement to service connection for right and left knee disabilities, and remand the matter for further adjudication consistent with the terms and conditions of this motion.

Respectfully submitted,

FOR APPELLANT:

/s/ Chris Attig
CHRIS ATTIG, Attorney
Attig | Steel PLLC
P.O. Box 250724
Little Rock, Arkansas 72225
866-627-7764

FOR APPELLEE:

JAMES M. BYRNE
General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Emily C. Purcell
EMILY C. PURCELL
Acting Deputy Chief Counsel

/s/ Mark J. Villapando
MARK J. VILLAPANDO
Appellate Attorney
Office of General Counsel (027F)
U.S. Dept. of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
202-632-7147

Attorneys for Appellee
Acting Secretary of Veterans Affairs