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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 17-0628

FRANK J. WALZL, APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before DAVIS, *Chief Judge*.

MEMORANDUM DECISION

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

DAVIS, *Chief Judge*: U.S. Army veteran Frank J. Walzl suffers from tension headaches, secondary to service-connected cervical neck degenerative disease, that are exacerbated by physical activity including bending and lifting. In a January 19, 2017, decision, the Board of Veterans' Appeals determined that Mr. Walzl's headaches warranted a 30% disability rating. It found, however, that the headaches "are not productive of the 'severe economic inadaptability'" that a 50% rating requires.¹ The Board also found that the record did not reasonably raise the issue of entitlement to a total disability rating based on individual unemployability (TDIU).

Mr. Walzl now contends that the Board erred in two ways. First, he argues that the Board did not adequately explain why his disability was not productive of severe economic inadaptability. Second, he asserts that the Board should have considered whether his tension headaches render him capable of only marginal employment, thus entitling him to TDIU.

Because the Board failed to provide an adequate statement of reasons or bases for its conclusion that Mr. Walzl's headaches were not productive of severe economic inadaptability, the Court will set aside that part of the Board's decision denying entitlement to an increased disability rating for headaches, including entitlement to TDIU, and remand that matter for further

¹ Record (R.) at 8.

proceedings. In addition, because Mr. Walzl does not challenge the Board's finding that he withdrew a claim for entitlement to an increased rating for a cervical neck disability, the Court will dismiss the appeal as to that issue.²

I. ANALYSIS

Mr. Walzl's tension headaches are rated under 38 C.F.R. § 4.124a, Diagnostic Code (DC) 8100. To warrant a 50% rating, Mr. Walzl must have headaches "[w]ith very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability."³ The Board determined that, while Mr. Walzl's headaches "have a frequency and severity that could qualify for [a 50%] rating, . . . the attacks are not productive of the 'severe economic inadaptability,' which the rating requires."⁴ Thus, it appears that the Board denied a 50% rating based only on its conclusion that Mr. Walzl's headaches are not productive of severe economic inadaptability.

"Nowhere in the DC is 'inadaptability' defined, nor can a definition be found elsewhere in title 38 of the Code of Federal Regulations."⁵ Indeed, as the Court recently recognized, "DC 8100 is rife with subjective terms of degree, the standards for which are undefined in the Board's discussion or anywhere in the regulatory structure."⁶ Although the Board need not precisely define terms such as "severe," it "must explain, in the context of the facts presented, the rating criteria used in determining the category into which a claimant's symptoms fall; it is not sufficient to simply state that a claimant's degree of impairment lies at a certain level without providing an adequate explanation."⁷

Here, the Board found that Mr. Walzl's headaches were not productive of severe economic inadaptability because he was able to work part time as a school bus driver, "most, if not all, of [his] treatment for his headaches h[as] been on an outpatient basis," and because, although Mr. Walzl "has to pay people to do things which would trigger a headache, . . . there is no indication

² See *Pederson v. McDonald*, 27 Vet.App. 276, 285 (2015) (en banc).

³ 38 C.F.R. § 4.124a, DC 8100 (2018).

⁴ R. at 8.

⁵ *Pierce v. Principi*, 18 Vet.App. 440, 446 (2004).

⁶ *Johnson v. Wilkie*, 30 Vet.App. 245, 254 (2018).

⁷ *Buczynski v. Shinseki*, 24 Vet.App. 221, 224 (2011).

that such payments rise up to the level of 'severe economic inadaptability.'"⁸ But nowhere does the Board explain what would constitute such inadaptability. Nor does the Board address whether Mr. Walzl's symptoms are *capable* of producing severe economic inadaptability, regardless of whether they *actually* do so.⁹ Absent a discussion of these issues, the Board's statement of reasons or bases frustrates the Court's review and is thus inadequate.¹⁰ The Court will, therefore, set aside the Board's denial of entitlement to a disability rating greater than 30% for tension headaches and remand that matter for further proceedings.

Given this conclusion, the Court will not now address Mr. Walzl's additional argument regarding the Board's TDIU determination.¹¹ In pursuing his claim on remand, Mr. Walzl will be free to raise this argument and may submit additional evidence and arguments,¹² which the Board must consider.¹³

II. CONCLUSION

On consideration of the foregoing, the Court SETS ASIDE that part of the Board decision denying entitlement to a disability rating greater than 30% for tension headaches, including entitlement to TDIU, and REMANDS that matter for further proceedings consistent with this decision. The appeal is otherwise DISMISSED.

DATED: December 14, 2018

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⁸ R. at 8-9.

⁹ See *Pierce*, 18 Vet.App. at 445 (recognizing that "productive of" can be read as either "producing" or "capable of producing").

¹⁰ See 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995).

¹¹ See *Mahl v. Principi*, 15 Vet.App. 37, 38 (2001) (per curiam order).

¹² See *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order).

¹³ *Kay v. Principi*, 16 Vet.App. 529, 534 (2002).