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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 18-1930

PAUL F. ECKMAN, APPELLANT,

v.

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

Before SCHOELEN, *Judge*.

MEMORANDUM DECISION

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

SCHOELEN, *Judge*: The appellant, Paul F. Eckman, through counsel, appeals a December 28, 2017, Board of Veterans' Appeals (Board) decision that denied service connection for a left knee disability. Record of Proceedings (R.) at 1-11. Because the Board relied on an inadequate medical examination, the Court will vacate the Board's decision and remand the matter for a new examination and further adjudication.

I. BACKGROUND

The appellant served in the U.S. Marine Corps from February 1962 to October 1966. R. at 3819, 12828. In April 1970, he filed a compensation claim for a left knee disability. R. at 13595-98. VA denied the claim the following month. R. at 13577. The appellant requested that VA reopen his claim, and VA denied his request in a March 1971 rating decision. R. at 13535-38, 13569-70.

In December 2009, the appellant again attempted to reopen his disability compensation claim for a left knee disability, but was denied in a July 2010 rating decision that found he had not provided new and material evidence relating to the claim. R. at 13269-80, 13404-05.

A January 2016 Board decision found that the appellant had presented new and material evidence sufficient to reopen the appellant's disability compensation claim for a left knee disability, and the Board remanded the matter for additional development. R. at 3011-22.

After VA provided a Supplemental Statement of the Case, the Board requested a medical opinion from a Veterans Health Administration orthopedist. R. at 421-23, 2391-95. The Board asked the orthopedist to opine whether "[f]or any diagnosed left knee disability, other than sciatic nerve radiculopathy, is it as likely as not (i.e. probability of 50[%] or greater) that the left knee disability had its onset in service or is otherwise related to service . . . ?" R. at 418. The orthopedist responded that nearly no records exist concerning the appellant's left knee complaints, but after reviewing x-rays taken in 2011 and 2015, the orthopedist stated that both knees "show good maintenance of joint space with some medial compartmental narrowing." *Id.* He further stated that "[t]he unique observation is, the right knee has slightly more medial compartmental narrowing than the left, of which the assumption can be made that since the right knee x-rays are worse than the left, the minimal arthritis seen in both knees [is] the result of normal aging processes," and that "one can assume with relative probability that his knee issues are not the result of residuals from the left knee injury he experienced 45 years earlier." *Id.* Lastly, the orthopedist noted that the appellant "did not seek care for his knee until seeking disability, so one must also assume the knee pain extending from his injury in April 1962 is not to the extent that would warrant disability." *Id.*

In the December 2017 decision on appeal, the Board found the orthopedist's report "the most persuasive evidence of record," finding it "very-convincing and well-reasoned." R. at 8. Accordingly, the Board denied the appellant's disability compensation claim for a left knee disability. R. at 9. This appeal followed.

II. ANALYSIS

A medical opinion is "adequate where it is based upon consideration of the veteran's prior medical history and examinations and describes the disability, if any, in sufficient detail so that the Board's "evaluation of the claimed disability will be a fully informed one."" *Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007) (quoting *Ardison v. Brown*, 6 Vet.App. 405, 407 (1994) (quoting *Green v. Derwinski*, 1 Vet.App. 121, 124 (1991))). Additionally, the opinion "must support its conclusion with an analysis that the Board can consider." *Green*, 1 Vet.App. at 124-25; *see also Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008) (noting that "a medical examination

report must contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two"). The reasoning underlying a medical opinion is important because "most of the probative value of a medical opinion comes from its reasoning." *Nieves-Rodriguez*, 22 Vet.App. at 304; *see Monzingo v. Shinseki*, 26 Vet.App. 97, 105 (2012) (per curiam) (stating that a medical report is adequate when it "sufficiently inform[s] the Board of a medical expert's judgment on a medical question and the essential rationale for that opinion").

"Whether a medical opinion is adequate is a finding of fact, which this Court reviews under the 'clearly erroneous' standard." *D'Aries v. Peake*, 22 Vet.App. 97, 104 (2008); *see also Gilbert v. Derwinski*, 1 Vet.App. 49, 52 (1990). A finding of fact is clearly erroneous when the Court, after reviewing the entire evidence, "is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); *Gilbert*, 1 Vet.App. at 52.

The appellant's fundamental argument is that the 2017 medical opinion is inadequate and the Board improperly relied upon it when denying service connection for his left knee disability. Appellant's Brief (Br.) at 6-12. The Secretary argues that the Court should affirm the Board's decision and find that the 2017 orthopedist's opinion is adequate. Secretary's Br. at 17-21.

As noted above, the Board decision on appeal declared the orthopedist's 2017 report "the most persuasive evidence of record," finding it "very-convincing and well-reasoned." R. at 8. The Board found this to be the case because "after examining recent x-rays, which demonstrate the nature of the [appellant's] arthritis as being minimal, bilateral, and slightly worse on the knee not injured during service, the orthopedist concluded that there was no relationship between the left knee arthritis and service." *Id.*

The Court agrees with the appellant that the 2017 examination is inadequate. Particularly, although the Board specifically asked the orthopedic surgeon to state whether it is as likely as not (a probability of 50% or greater) that the left knee disability had its onset in service or is otherwise related to service, the orthopedist stated that, after reviewing x-rays, "one can assume with relative probability that his knee issues are not the result of residuals from the left knee injury he experienced 45 years ago." R. at 418. The Court cannot ascertain the meaning of, and the Board cannot properly rely on, a medical opinion that substitutes "assume with relative probability" for the proper legal standard of "is it as likely as not." That statement alone warrants remand for the Board to seek a new medical opinion applying the correct legal standard. Additionally, the

orthopedist did not provide an adequate rationale for his statement that because the appellant did not seek care for his knee until seeking disability, "one must also assume the knee pain extending from his injury in April 1962 is not to the extent that would warrant disability." *Id.*; see *Monzingo*, 26 Vet.App. at 105. Accordingly, the Court will remand the matter for the Board to obtain an adequate medical examination. See *Tucker v. West*, 11 Vet.App. 369, 374 (1998) (holding that remand is the appropriate remedy "where the Board has incorrectly applied the law, failed to provide an adequate statement of reasons or bases for its determinations, or where the record is otherwise inadequate").

Given this disposition, the Court will not address the remaining arguments and issues raised by the appellant. See *Best v. Principi*, 15 Vet.App. 18, 20 (2001) (per curiam). On remand, the appellant is free to present any additional arguments and evidence to the Board in accordance with *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order). See *Kay v. Principi*, 16 Vet.App. 529, 534 (2002). The Court reminds the Board that "[a] remand is meant to entail a critical examination of the justification for [the Board's] decision," *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991), and must be performed in an expeditious manner in accordance with 38 U.S.C. § 7112.

III. CONCLUSION

After reviewing the parties' briefs and record on appeal, the Board's December 28, 2017, decision is VACATED and the matter is REMANDED for readjudication.

DATED: November 6, 2019

Copies to:

Christopher F. Attig, Esq.

VA General Counsel (027)