

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

PETER CRANSTON JOHNS,)

Appellant,)

v.)

Vet. App. No. 20-2665

ROBERT L. WILKIE,)

Secretary of Veterans Affairs,)

Appellee.)

JOINT MOTION FOR REMAND

Pursuant to U.S. Vet.App. R. 27 and 45(g), the parties move the Court to vacate the December 19, 2019, decision of the Board of Veterans' Appeals (Board) denying entitlement to an effective date prior to December 4, 2012, for service connection for posttraumatic stress disorder (PTSD) and remand the matter for readjudication consistent with this motion.

BASIS FOR REMAND

Remand is required because the Board erred when it failed to address the applicability of 38 C.F.R. § 3.156(c)(1) in determining whether Appellant is entitled to an earlier effective date for service connection for PTSD. 38 C.F.R. § 3.156(c)(1) provides that "any time after [the Department of Veterans Affairs (VA)] issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim." An award based in part or in all on the records outlined in Section

3.156(c)(1) “is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.” 38 C.F.R. § 3.156(c)(3).

The Board found that Appellant initially filed a claim for a nervous condition in December 1970. R. at 7 (1-11); R. at 1773-76. The Board also found that the 1971 rating decision that denied entitlement to service connection for PTSD was final. R. at 7 (1-11). While there were some service records in VA possession at the time of the 1971 rating decision, see R. at 1746-1763, additional service records were subsequently added to the record, see R. at 1596-98 (service dental records); R. at 1491-1577 (service personnel records); R. at 1582-83 (abstract of service and medical history); R. at 1590 (request for complete service treatment records and entire personnel file and confirmation of receipt in November 2013). After such records were added, Appellant was granted entitlement to service connection to PTSD. R. at 1261-64 (May 2014 rating decision); R. at 1248-52 (associated letter). However, in determining the appropriate effective date, the Board failed to explain whether 38 C.F.R. § 3.156(c) applied and whether such regulation entitled Appellant to an earlier effective date. Accordingly, remand is warranted for the Board to address the applicability of 38 C.F.R. § 3.156(c) in determining whether Appellant is entitled to an earlier effective date for service connection for PTSD. See *Tucker v. West*, 11 Vet.App. 369, 374 (1998) (explaining that remand is appropriate “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”).

General Remand Instructions

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 except the parties’ right to appeal the Court’s order implementing this joint motion. Pursuant to Rule 41(c)(2), the parties agree to unequivocally waive further Court review of and any right to appeal the Court’s order on this joint motion, and respectfully ask that the Court enter mandate upon the granting of this joint motion.

The Board decision should be vacated and the appeal remanded for readjudication consistent with the foregoing. 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 v. Derwinski*, 1 Vet.App. 49, 57 (1990). On remand, Appellant may submit additional evidence and argument regarding his claim. See *Kutscherousky v. West*, 12 Vet.App. 369, 372 (1999) (per curiam order). The Board is expected to “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). Before relying on any additional evidence developed, the Board shall ensure that Appellant is given notice thereof and an opportunity to respond thereto. See *Austin v. Brown*, 6 Vet.App. 547, 551 (1994); *Thurber v. Brown*, 5 Vet.App. 119, 126 (1993). The terms of this joint motion are enforceable on remand. *Forcier v. Nicholson*, 19 Vet.App. 414, 425 (2006). Also, on remand, the Board shall obtain copies of the Court’s order and this motion and incorporate them into Appellant’s VA file and provide this claim expeditious treatment, as required by 38 U.S.C. § 7112.

WHEREFORE, the parties respectfully move the Court to vacate the December 19, 2019, Board decision denying entitlement to an effective date prior to December 4, 2012, for service connection for PTSD and remand for readjudication consistent with the foregoing.

Respectfully submitted,

FOR APPELLANT:

Dated: December 16, 2020

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