

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

CHRISTOPHER L. SCOTT,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 20-4774
)	
DAT P. TRAN,)	
Acting Secretary of Veterans Affairs,)	
)	
Appellee.)	

JOINT MOTION FOR REMAND

Under U.S. Vet. App. Rules 27 and 45(g), Appellant, Christopher L. Scott, and Appellee, Dat P. Tran, Acting Secretary of Veterans Affairs, through their undersigned representatives, respectfully move the Court to vacate and remand the March 16, 2020, Board of Veterans' Appeals (Board) decision that denied a rating in excess of 50% for posttraumatic stress disorder (PTSD). Record Before the Agency (R.) at 4-12.

BASES FOR REMAND

1. Reasons or Bases

The parties agree that vacatur and remand are required because the Board provided an inadequate statement of reasons or bases for its decision. A Board decision must include "a written statement of the Board's 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). This Court has

interpreted that requirement to impose on the Board the obligation to analyze the probative value of the evidence, account for that which it finds persuasive or unpersuasive, and explain the basis of its rejection of evidence materially favorable to the claimant. *Caluza v. Brown*, 7 Vet.App. 498, 506 (1995).

In February 2018, Appellant's private psychologist submitted an opinion regarding his evaluation of Appellant. R. at 1199-1218. The psychologist indicated a review of Appellant's claims file, compensation and pension examinations, service medical records, and other documents. R. at 1200. The psychologist concluded that Appellant had total occupational and social impairment. R. at 1213. The psychologist also found that Appellant had occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood. *Id.* The psychologist further opined that Appellant has not been able to follow and secure a substantially gainful occupation as a result of his mental health condition since May 2013. R. at 1214. The Board did not address the private psychologist's opinion in its decision. R. at 7-9. As noted above, the Board has a duty to explain the basis of its rejection of materially favorable evidence. *See Caluza*, 7 Vet.App. at 506. The Board also failed to address lay statements from Appellant's mother (R. at 1195-1196) and ex-wife (R. at 1253-1256).

The Board also noted that Appellant "has shown suicidal ideation in the remote past." R. at 8. However, in February 2018, Appellant stated that he continues to fantasize about hurting himself but stopped reporting his thoughts of

self-harm for fear of ending up in the psych ward. R. at 1264. The Board did not reconcile its finding with Appellant's statement that he continues to have thoughts of self-harm.

Accordingly, the parties agree that remand is warranted for the Board to provide an adequate statement of reasons or bases that addresses the foregoing evidence.

2. Other considerations

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 matters being remanded except the parties' right to appeal the Court's order implementing this Joint Motion. The parties agree to unequivocally waive any right to appeal the Court's order on this JMR and respectfully ask that the Court enter mandate upon the granting of this motion.

The Court should vacate the Board decision and remand the appeal for readjudication consistent with the foregoing. On remand, Appellant may submit additional argument to the Board consistent with a notice letter that will be sent by the Board. 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). The Board shall incorporate copies of this Joint Motion and the Court's order into Appellant's record. The Board shall provide this claim expeditious treatment as required by 38 U.S.C. § 7112.

CONCLUSION

WHEREFORE, the parties respectfully move the Court to vacate the March 16, 2020, Board decision that denied a rating above 50% for PTSD, and to remand this appeal for further action consistent with the foregoing.

Respectfully submitted,

FOR APPELLANT:

Date: February 8, 2021

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