

SCOTT L. BRAUN

V.

JOINT MOTION FOR REMAND

BASIS FOR REMAND

Vacatur and remand are warranted because the Board erred by not providing an adequate statement of reasons or bases for its decision to deny TDIU. See R. at 5-9; *Allday v. Brown*, 7 Vet.App. 517, 527 (1995) (the Board's statement of reasons or bases is adequate when it enables the appellant to understand the precise basis for the decision rendered and facilitates judicial review). Specifically, the Board's analysis as it related to Appellant's service-connected post-traumatic stress disorder (PTSD) was limited to one sentence: "The evidence shows that, while [his] service-connected PTSD does have some effect on his mental abilities, the service-connected disability alone did not render him unemployable." R. at 8 (5-9). It did not explain why it found that Appellant's PTSD did not render him

unemployable; instead, it appears to have relied upon or adopted the findings of the May 2019 VA examination report without providing its own analysis. See R. at 7-8 (5-9); *Delrio v. Wilkie*, 32 Vet.App. 232, 243 (2019) (examiners may assist VA adjudicators in making the ultimate TDIU determination by providing detailed descriptions of disabilities and the functional limitations they cause, but the ultimate determination as to whether TDIU is warranted belongs exclusively to the adjudicator). This lack of analysis renders the Board's statement of reasons or bases inadequate. See *Allday*, 7 Vet.App. at 527. On remand, the Board must ensure that its analysis complies with *Delrio*. Furthermore, although the Secretary does not concede error in this regard, the Board should also consider the evidence of record in light of *Ray v. Wilkie*, 31 Vet.App. 58, 67-76 (2019).

CONCLUSION

The parties thus move the Court to vacate the Board's decision, consistent with the foregoing, and remand this matter. The parties agree that this joint motion for remand (JMR) 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 JMR. 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.

Upon remand, the Board "will 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). Upon remand, Appellant is entitled to submit additional evidence and argument regarding his claim and the Board may seek any additional evidence it deems necessary for a timely resolution of the claim. *See Kutscherousky v. West*, 12 Vet.App. 369, 372 (1999) (per curiam order). Before relying on any additional evidence developed, the Board should ensure that the Veteran is given notice thereof, an opportunity to respond thereto. *See Thurber v. Brown*, 5 Vet.App. 119, 126 (1993). The Secretary shall provide this claim expeditious treatment, as required by 38 U.S.C. § 7112. Finally, the Board shall incorporate copies of this JMR and the Court's order granting it into Appellant's claims folder.

Respectfully submitted,

FOR APPELLANT:

02/11/2021

DATE

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