

ROY MONROE,
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 Appellant,
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 v.) Vet. App. No. 20-6914
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DENIS MCDONOUGH,
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 Secretary of Veterans Affairs,
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 Appellee.)

Pursuant to United States Court of Appeals for Veterans Claims Rules 27(a) and 45(g), the parties respectfully move the Court to issue an order partially vacating and remanding the June 9, 2020, decision of the Board of Veterans' Appeals (Board or BVA), to the extent it denied entitlement to: (1) an effective date prior to May 24, 2017, for the grant of service connection for residuals of Parkinson's disease, to include weakness of the upper and lower extremities bilaterally, and impairment of the seventh, tenth, and eleventh cranial nerves bilaterally, and (2) an effective date prior to September 10, 2019, for the grant of service connection for residuals of Parkinson's disease, to include loss of smell and constipation.

The Board granted, reopened, remanded, and denied myriad other claims in the decision on appeal. However, only the claims listed above are encompassed by this Joint Motion for Partial Remand (JMPR). The appeal as to any remaining

issues should be dismissed. See *Pederson v. McDonald*, 27 Vet.App. 276, 283 (2015) (en banc) (holding that when an appellant abandons a claim, the Court will dismiss that claim); *Sheets v. Nicholson*, 20 Vet.App. 463, 466-67 (2006) (Court “cannot disturb a factual finding that is favorable to the appellant”); *Breeden v. Principi*, 17 Vet.App. 475, 478 (2004) (Court lacks jurisdiction over claim remanded by BVA).

BASES FOR REMAND

The Board is required to consider, and discuss in its decision, all “potentially applicable” provisions of law and regulation. *Majeed v. Principi*, 16 Vet.App. 421 (2002). Under 38 U.S.C. § 7104(d)(1), a decision of the Board shall include a written statement of the Board’s findings and conclusions, and the reasons or bases for those findings and conclusions. *Gilbert v. Derwinski*, 1 Vet. App. 49, 56 (1990).

The parties agree that remand is required because the Board erred when it provided an inadequate statement of reasons or bases in support of its decision, thereby violating 38 U.S.C. § 7104(d)(1).

In the decision on appeal, the Board considered whether Appellant is entitled to an effective date prior to May 24, 2017, for the grant of service connection for residuals of Parkinson’s disease, to include weakness of the upper and lower extremities bilaterally, and impairment of the seventh, tenth, and eleventh cranial nerves bilaterally, pursuant to 38 C.F.R. § 3.816. It denied entitlement to an earlier effective based on the finding that Appellant did not fit into the parameters of that

regulation because his claim for service connection for Parkinson's disease was filed after the disease was already recognized by VA as a disease presumptively associated with exposure to herbicides. With regard to the Parkinson's disease residuals of loss of smell and constipation, the Board concluded that an effective date prior to September 10, 2019, was not warranted for the grant of service connection because the evidence did not show that Appellant had these residuals prior to September 10, 2019.

The parties agree that remand is required because the Board's statement of reasons or bases is inadequate because it did not address whether earlier effective date are warranted under the provisions of 38 C.F.R. § 3.114(a)(1), which applies when benefits are granted pursuant to a liberalizing law approved by the Secretary. Section 3.114(a)(1) states that, "[i]f a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue."

The liberalizing law recognizing Parkinson's disease as a condition presumptively associated with Agent Orange exposure was approved on August 31, 2010. See 75 Fed. Reg. 53202 (Aug. 31, 2010). Appellant filed his original claim for service connection for Parkinson's disease on September 29, 2010. See [R. at 2478, 2482, 2484, 2486-88 – September 29, 2010 claim]. On remand, the Board shall address whether earlier effective dates are warranted for Appellant's

service-connected Parkinson's disease and its associated residuals pursuant to 38 C.F.R. § 3.114(a)(1) based on his September 29, 2010, claim.

The parties agree that this JMPR 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 JMPR. The parties agree to unequivocally waive any right to appeal the Court's order on this JMPR and respectfully ask that the Court enter mandate upon the granting of this motion.

On remand, Appellant is entitled to submit additional evidence and argument in support of his claims. See *Kutscherousky v. West*, 12 Vet.App. 369, 372 (1999) (per curiam order); see *Clark v. O'Rourke*, 30 Vet. App. 92 (2018). The Board must "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). The terms of this JMPR are enforceable, and Appellant has enforceable rights with respect to its terms. See *Forcier v. Nicholson*, 19 Vet. App. 414, 425 (2006). The Board should also ensure that Appellant is given notice thereof, an opportunity to respond thereto, and the opportunity to submit additional argument or evidence. See *Thurber v. Brown*, 5 Vet.App. 119, 126 (1993).

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). If the Court grants this motion, the Board shall obtain copies of this motion and the Court's order, and incorporate them into Appellant's claims file. The Secretary shall provide this claim expeditious treatment as required by 38 U.S.C. § 7112.

CONCLUSION

WHEREFORE, the parties respectfully request the Court to issue an order vacating and remanding the June 9, 2020, Board decision to the extent it denied entitlement to: (1) an effective date prior to May 24, 2017, for the grant of service connection for residuals of Parkinson's disease, to include weakness of the upper and lower extremities bilaterally, and impairment of the seventh, tenth, and eleventh cranial nerves bilaterally, and (2) an effective date prior to September 10, 2019, for the grant of service connection for residuals of Parkinson's disease, to include loss of smell and constipation.

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Respectfully submitted,

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