

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

<b>THOMAS M. DUBELBEIS,</b>	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 21-0049
	)	
<b>DENIS MCDONOUGH,</b>	)	
Secretary of Veterans Affairs,	)	
Appellee.	)	

**JOINT MOTION FOR PARTIAL REMAND**

Under U.S. Vet. App. R. 27 and 45(g), the parties move the Court to vacate the part of the September 11, 2020, decision of the Board of Veterans' Appeals (Board) that denied entitlement to service connection for bilateral upper extremity peripheral neuropathy and remand the matter for readjudication. R. at 5 (1–13).

The Board granted entitlement to service connection for: diabetes mellitus, hypertension, bilateral lower extremity peripheral neuropathy as secondary to diabetes mellitus, and erectile dysfunction as secondary to diabetes mellitus. R. at 5. The Court should not disturb those findings. See *Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007) (noting that the Court may not disturb determinations of the Board that favor Appellant).

**BASES FOR REMAND**

The parties agree that remand is warranted because the Board failed to provide an adequate statement of reasons or bases in support of its finding that “the medical evidence of record reveals no evidence that [Appellant] is currently diagnosed with diabetic peripheral neuropathy in the right and/or left upper

extremities.” See 38 U.S.C. § 7104(d)(1); *Schafrath v. Derwinski*, 1 Vet.App. 1 Vet.App. 589, 593 (1991). More specifically, the parties agree that the Board erred because it failed to address a February 2016 Disability Benefits Questionnaire (DBQ), received by VA in January 2017. R. at 807–11. See *Robinson v. Peake*, 21 Vet.App. 545, 552–53 (2008) (noting that the Board must discuss the relevant evidence of record), *aff’d sub nom. Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009).

Before the Board, Appellant’s representative asserted that “[t]he medical record establishes that [Appellant] suffers from [peripheral neuropathy] of the bilateral upper and lower extremities.” R. at 42 (32–43). In support, Appellant’s representative cited “VBMS document, Disability Benefits Questionnaire (DBQ)-Veteran Provided, VBMS received date 1/11/17.” R. at 42 (32–43); R. at 807–11. That DBQ was of record when Appellant submitted his Rapid Appeals Modernization Program (RAMP) opt-in election form in May 2018. R. at 784–85; see R. at 7 (explaining that the “Board may only consider the evidence of record at the time of the RAMP opt-in, as well as any evidence submitted by [Appellant] or his attorney with, or within 90 days from the receipt of, the VA Form 10182”) (citing 38 C.F.R. § 20.303).

In the February 2016 DBQ, a physician found that Appellant had symptoms attributable to diabetic peripheral neuropathy, to include moderate intermittent pain, and moderate paresthesias and/or dysesthesias of the bilateral upper extremities. R. at 807–08 (807–11). The examiner also found that Appellant had

decreased reflexes of the bilateral triceps and biceps. *Id.* at 808. While the examiner indicated that Appellant did not have upper extremity diabetic neuropathy, he indicated that Appellant had incomplete paralysis of the left upper extremity. *Id.* at 809–10.

In the decision on appeal, the Board found that “the medical evidence, to include the September 2013 VA examination report, identified diabetic peripheral neuropathy in the *lower* extremities, but specifically noted no symptoms or diagnoses with regard to the upper extremities.” R. at 11. The parties agree that the Board’s statement of reasons or bases is inadequate because the Board failed to address the February 2016 DBQ, in which the examiner found that Appellant had symptoms attributable to diabetic peripheral neuropathy, to include moderate intermittent pain and moderate paresthesias and/or dysesthesias of the bilateral upper extremities. R. at 807–08 (807–11); see *Robinson*, 21 Vet.App, at 552–53; *Schafraath*, 1 Vet.App. at 193. Accordingly, on remand, the Board must address the February 2016 DBQ in determining whether Appellant has peripheral neuropathy of the bilateral upper extremities. See *id.*

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 that, pursuant to Rule

41(c)(2), the parties agree to unequivocally waive further Court review of and any right to appeal to the U.S. Court of Appeals for the Federal Circuit of the Court's order on this Joint Motion. The parties 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**

For the above reasons, the parties move the Court to vacate the part of the September 11, 2020, Board decision that denied entitlement to service connection for bilateral upper extremity peripheral neuropathy and remand the matter for readjudication. R. at 5 (1–13).

Respectfully submitted,

FOR APPELLANT:

/s/ Haley Smith

**HALEY SMITH**

Attig Curran Steel, PLLC

P.O. Box 250724

Little Rock, AR 72225

(866) 627-7764

FOR APPELLEE:

**RICHARD A. SAUBER**

General Counsel

**MARY ANN FLYNN**

Chief Counsel

/s/ Anna Whited

**ANNA WHITED**

Deputy Chief Counsel

/s/ Timothy G. Joseph

**TIMOTHY G. JOSEPH**

Appellate Attorney

Office of General Counsel (027F)

U.S. Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, DC 20420

202-632-6915

DATE: June 14, 2021