

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

JAMES JACKSON,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 21-2655
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

JOINT MOTION FOR PARTIAL REMAND

Pursuant to U.S. Vet. App. Rules 27(a) and 45(g), the parties respectfully move the Court to vacate and remand the March 23, 2021, Board of Veterans' Appeals (Board) decision, which denied entitlement to a rating in excess of 50 percent for posttraumatic stress disorder (PTSD).

The Board granted entitlement to a 50 percent rating for PTSD, effective from March 9, 2017. The Court may not disturb this favorable finding. See *Sheets v. Nicholson*, 20 Vet.App. 463, 466-67 (2006) (Court "cannot disturb a factual finding that is favorable to the appellant").

BASIS FOR REMAND

The parties agree that remand is required because the Board erred by providing an inadequate statement of reasons or bases, thereby violating 38 U.S.C. § 7104(d)(1).

The Board is required to address, 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).

In the decision on appeal, the Board denied entitlement to a rating in excess of 50 percent for Appellant's service-connected PTSD. In reaching this conclusion, the Board essentially conceded that Appellant has suicidal ideation, but nonetheless found that a rating in excess of 50 percent is not warranted for his service-connected PTSD because the evidence does not show that he "posed a persistent danger of harm to himself or others, as the evidence shows the danger was occasional." (BVA Decision at 8).

The parties agree that remand is required because the Board's statement of reasons or bases is inadequate because it is not consistent with the Court's decision in *Bankhead v. Shulkin*, 29 Vet.App. 10, 20 (2017), which held that a claimant need not act on suicidal thoughts to have social and occupational impairment with deficiencies in most areas. The parties also agree that the Board did not adequately explain the bases for its conclusion that Appellant's social and occupational impairment due to his service-connected PTSD disorder did not warrant a rating in excess of 50 percent. See *Dennis v. Nicholson*, 21 Vet. App. 18, 22 (2007) ("The Court has long held that merely listing evidence before stating a conclusion does not constitute an adequate statement of reasons and bases" (citing *Abernathy v. Principi*, 3 Vet. App. 461, 465 (1992)); *Mauerhan v. Principi*,

16 Vet.App. 436, 440-41 (2002) (VA must consider “all the evidence of record that bears on occupational and social impairment,” and then “assign a disability rating that most closely reflects the level of social and occupational impairment a veteran is suffering.”). Being a “persistent danger of hurting self and others” is in the rating criteria for a 100 percent rating under the General Rating Formula for Mental Disorders. See 38 C.F.R. § 4.130. It’s not part of the criteria for a 70 percent rating.

On remand, the Board shall readjudicate Appellant’s claim and ensure compliance with *Mauerhan* by addressing the extent Appellant’s symptoms result in occupational and social impairment notwithstanding the absence of some of the symptoms enumerated in the rating criteria. The Board should be mindful that, “it is not the symptoms, but their effects, that determine the level of impairment.” *Mauherhan*, 16 Vet.App. at 443 (citing 61 Fed. Reg. 52,695, 52,697 (Oct. 8, 1996)). The Board should also be mindful that a claimant need not act on suicidal thoughts, and that the presence of suicidal ideation alone may demonstrate social and occupational impairment with deficiencies in most areas. See *Bankhead*, 29 Vet.App. at 20.

The parties agree that this joint motion for partial remand (JMPPR) 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. 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 is still expected reexamine the evidence of record and conduct a critical examination of the justification for the previous decision. See *Andrews v. McDonough*, --- Vet.App. ---, 2021 U.S. App. Vet. Claims LEXIS 972, 19-20 (May 28, 2021). 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.

WHEREFORE, the parties move this Court to issue an order vacating and remanding the March 23, 2021 Board decision to the extent it denied entitlement to a rating in excess of 50 percent for PTSD for action consistent with the foregoing discussion.

The Board granted entitlement to a 50 percent rating for PTSD, effective

from March 9, 2017. The Court may not disturb this favorable finding.

Respectfully submitted,

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