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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 14-1811

DAVID P. HILL,

APPELLANT,

v.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On June 11, 2014, the appellant, veteran David P. Hill, appealed through counsel an April 7, 2014, Board of Veterans' Appeals (Board) decision that (1) found that new and material evidence had not been submitted to reopen a low back disability claim and (2) denied entitlement to benefits based on service connection for an acquired psychiatric disorder, to include post-traumatic stress disorder (PTSD).

On October 30, 2015, the Court issued a single judge memorandum decision vacating and remanding the April 2014 Board decision, finding that the Board provided inadequate reasons or bases for its decision. The Court, however, specifically rejected Mr. Hill's argument that, although his claims are based on a period of active duty for training (ACDUTRA), he has established veteran status through the award of benefits for a right knee disability incurred during the same period of ACDUTRA, and therefore, he is entitled to the presumption of aggravation of his preexisting back and psychiatric disabilities incurred during that period.

On November 18, 2015, Mr. Hill moved for panel review of his rejected argument. On January 13, 2016, this case was submitted to a panel for decision.

In the April 2014 decision on appeal, the Board noted that, "[a]s a threshold matter, veteran status must be established as a condition of eligibility for service connection benefits." Record (R.) at 8. The Board then stated that, "[t]o establish status as a [v]eteran based upon a period of ACDUTRA, a claimant must establish that he was disabled from disease or injury incurred or aggravated in the line of duty during that period of ACDUTRA." R. at 9. The Board acknowledged that, without veteran status, a claimant cannot take advantage of "the many presumptions in the law that are available only to [v]eterans," including the presumptions of sound condition and aggravation. *Id.* The Board concluded that Mr. Hill "had a period of ACDUTRA from June 7, 1997[,] to June

21, 1997. Service connection has been established for a right knee disability based on this June 1997 period[,] which is therefore considered to be a period of active service." R. at 10; *see also* R. at 18 (Board stating "the appellant has achieved Veteran status with regard to the June 7-21, 1997 period of ACDUTRA).

To assist in the resolution of this appeal, the Court will order the parties to submit supplemental memoranda of law on the following questions:

(1) Did the Board establish that Mr. Hill was a veteran and, if so, is the Board's determination regarding Mr. Hill's veteran status a favorable finding of fact that the Court may not disturb, pursuant to *Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007)?

(2) If a claimant establishes veteran status by showing that a disability was incurred in or aggravated during a period of ACDUTRA, does the claimant's veteran status then entitle him to the presumption of aggravation of a *different*, preexisting disability claimed to have been aggravated during the same period of ACDUTRA?

In responding to this question, the Court asks both parties to discuss *Donnellan v. Shinseki*, 24 Vet.App. 167 (2010); *Smith v. Shinseki*, 24 Vet.App. 40, 48 (2010); *Paulson v. Brown*, 7 Vet.App. 466 (1995); and *Biggins v. Derwinski*, 1 Vet.App. 474 (1991).

(3) If the answer to Question 2 is yes, does the claimant need to have a military entrance examination prior to his period of ACDUTRA or is other evidence acceptable to establish the baseline of his preexisting condition?

The parties' supplemental memoranda should not exceed 15 pages in length, "not counting the table of contents; the table of authorities; any appendix containing superseded statutes, rules, and regulations, and unpublished authorities; and the certificate of service." U.S. VET. APP. R. 32(e).

Upon consideration of the foregoing, it is

ORDERED that the parties file, not later than 30 days after the date of this order, supplemental memoranda of law as described above. It is further

ORDERED that oral argument will be scheduled as the business of the Court permits.

DATED: March 29, 2016

PER CURIAM.

Copies to:

Kevin F. King, Esq.

VA General Counsel (027)