





probative value of the doctors opinions to warrant the denial of his claims. The adequacy of his doctors reports are also clearly shown in the said brief. However, in response to Appellee's arguments in Appellee's brief, Appellant reiterates his position in the following statements.

***THERE ARE NO INACCURACIES OR INCONSISTENCIES IN THE RECORD OF EVIDENCE***

Appellee cites the June 2012 medical opinion of Dr. Abidi as one of those based on "an inaccurate factual premise" because Dr. Abidi "noted a history of closed head trauma while in service", whereas "the Board explained that there is no evidence in the record of such trauma". (Appellee's brief at page 9). Appellant reiterates that there is no inaccuracy in Dr. Abidi's statement because his notation of a closed head injury is based on Appellant's account of the injury or injuries he sustained because of the jeep accident in service. This fact is not disputed. The Board has accepted the credibility of Appellant's statement. And because of the credibility of Appellant's statements regarding the in-service accident and resulting injuries, he has been found service connected for migraine headaches. Hence, Dr. Abidi's opinion cannot be viewed as based on an inaccurate factual premise because he chose to refer to the in-service injury as a closed head injury which is not otherwise referred to as such in the record.

Similarly, Dr. Ganti's June 2013 medical opinion cannot be deemed inaccurate or inadequate because he "suggested that Appellant had not reported his MVA accident to authorities during service", even though the Appellant "expressly testified that he reported the accident to his mess Sergeant after it occurred." (Appellee's brief at page 9). The term "authorities" here is questionable. It is not clear whether Dr. Ganti was referring to authorities such as the mess sergeant, or to other authorities like the military police or the local police in the town where the accident occurred. Also, Dr. Ganti's statement that Appellant's disabilities "stemmed from his years of military service" (Appellee's brief at page 9), cannot be deemed inaccurate vis-à-vis Appellant's statement to the VA examiner that "his neck and low back disabilities occurred as a result of one jeep accident during service (*Ibid*). The one jeep accident occurred during Appellant's two years of military service. Appellant did not leave the military service immediately after the accident, and his testimony is that even though he did not seek medical care, he continued to experience pain in the areas of his neck and back. Dr. Ganti did not state that there was more than one accident in service, and to infer such would be error.

Therefore Appellee's statement that "there was plausible probative evidence of record for the Board to discount these private medical evidence due to an inaccurate factual premise" (*Ibid*) is incorrect and unsustainable. The Board has

made a determination which is clearly erroneous (38 U.S.C. § 7261(a)(4) which the Court must not affirm, as the determination is not supported by a plausible basis in the record. *Gilbert V. Derwinski*, 1 Vet. App. 49, 52 (1990). Appellant maintains that the Board has not adequately explained the alleged inaccuracies, nor has it shown how the alleged inaccuracies affect the issue of whether it is as likely as not that the Appellant's current diagnoses are linked to his in-service injuries, the account of which the Board has already accepted as credible.

The Court must also consider the opinion of Dr. Batool Razvi, who assumed care of Appellant from Dr. Ganti. On the basis of these opinions, the Appellant's entitlement to service connection for his neck and back conditions is established.

#### ***ADEQUACY AND/OR INADEQUACY OF MEDICAL REPORTS***

The adequacy of the reports of Appellant private doctors are clearly demonstrated in the above statements and in those made in Appellant's previous brief. (Appellant's brief at pages 5 – 8). Appellant reiterates that he has satisfied the criteria for service connection for his DJD and DDD of the cervical spine, and for service connection for his DDD of the lumbar spine. The supportive opinions of Appellant's treating physicians as well as that of the VA examiner put the evidence in relative equipoise which warrants the application of the benefit-of-the-doubt rule. (38 CFR § 3.102; *Gilbert v. Derwinski*, 1 Vet. App. 49, 55 (1990); 38 CFR 3.102).

## CONCLUSION

For the reasons given above, Appellant believes that he is entitled to service connection for his neck and low back conditions. The Board erred in its assessment of the medical evidence; it made findings of facts which are clearly erroneous; and it has otherwise relied on its own, unsubstantiated medical opinion to deny service connection. The Appellant respectfully requests that the Board's decision be reversed.

Respectfully Submitted,

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