DEPARTMENT OF VETERANS AFFAIRS
Board of Veterans' Appeals
Washington DC 20420

MAY - 2 2016

In Reply Refer To: (0141 A1)
[redacted]C

SAMUEL J RUMPH
5641 CALIFORNIA AVE
APT 715
JACKSONVILLE, FL 32244

Dear Appellant:

The Board of Veterans' Appeals has made a decision in this case, and a copy is enclosed. The records are being returned to the Department of Veterans Affairs office having jurisdiction over this matter.

The Board of Veterans Appeals has partnered with J.D. Power and Associates to determine how our customers perceive the service we provide as an organization. You may be contacted by telephone from someone at J.D. Power and Associates in the next 30-60 days and asked to provide feedback on your experience with the Board of Veterans Appeals by taking a brief survey. We appreciate your willingness to help us improve our processes and the service we provide for Veterans by participating in this survey. Any comments provided to J.D. Power are 100% anonymous and will not impact the delivery or timing of any future benefits provided by VA.

Thank you in advance for your willingness to participate and share your feedback.

Sincerely yours,

Barbara C. Morton
Director, Office of Management, Planning and Analysis

Enclosures (1)

cc: JOSEPH SCONE
3119 Spring Glen Road
Suite 109
Jacksonville, FL 32207

BOARD OF VETERANS' APPEALS

DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF
SAMUEL J. RUMPH

C [redacted]

DOCKET NO. 11-21 033) DATE MAY - 2 2016
)
)

On appeal from the
Department of Veterans Affairs Regional Office in St. Petersburg, Florida

THE ISSUES

1. Entitlement to service connection for a right knee disorder.

2. Entitlement to service connection for a lumbosacral spine disorder.

3. Entitlement to service connection for a left ankle disorder.

4. Entitlement to service connection for a cervical spine (neck) disorder.

5. Entitlement to service connection for a right shoulder disorder.

6. Entitlement to service connection for a left shoulder disorder.

REPRESENTATION

Appellant represented by: Joseph Scone, Attorney

IN THE APPEAL OF C[redacted]
SAMUEL J. RUMPH

WITNESS AT HEARING ON APPEAL

Appellant

ATTORNEY FOR THE BOARD

T. Azizi-Barcelo, Counsel

INTRODUCTION

The Veteran served on active duty from November 1972 to November 1975, from October 1979 to September 1981, and from November 1981 to June 1986.

This matter comes before the Board of Veterans' Appeals (Board) on appeal of a January 2010 rating decision by the Department of Veterans Affairs (VA) Regional Office (RO). This case was previously before the Board in July 2012 and November 2014, and was remanded for further development, which has been completed.

In November 2012, the Veteran testified at a Travel Board hearing before the undersigned Veterans Law Judge (VLJ). A transcript of this hearing is associated with the claims file.

Following the issuance of the most recent statement of the case, the Veteran submitted additional evidence and waived the right to have the evidence initially considered by the RO. 38 C.F.R. § 20.1304.

FINDINGS OF FACT

1. A chronic right knee disorder was not shown in service or for many years thereafter, and the most probative evidence indicates the current disability is not related to service, or caused or aggravated by a service-connected disability.

2. A chronic lumbosacral spine disability was not shown in service or for many years thereafter, and the most probative evidence indicates the current disability is not related to service, or caused or aggravated by a service-connected disability.

3. A chronic left ankle disability was not shown in service or for many years thereafter, and the most probative evidence indicates the current disability is not related to service, or caused or aggravated by a service-connected disability.

4. A chronic cervical spine disability was not shown in service or for many years thereafter, and there is no probative evidence linking such condition with service or a service-connected disability.

5. Chronic right and left shoulder disabilities were not shown in service or for many years thereafter, and there is no probative evidence linking such conditions with service or a service-connected disability.

CONCLUSIONS OF LAW

1. The criteria for service connection for a right knee disorder have not been met. 38 U.S.C.A. §§ 1110, 1112, 1131, 1137, 5107 (West 2014); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2015).

2. The criteria for service connection for a lumbosacral spine disorder have not been met. 38 U.S.C.A. §§ 1110, 1112, 1131, 1137, 5107 (West 2014); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2015).

3. The criteria for service connection for a left ankle disorder have not been met. 38 U.S.C.A. §§ 1110, 1112, 1131, 1137, 5107 (West 2014); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2015).

4. The criteria for service connection for a cervical spine disorder have not been met. 38 U.S.C.A. §§ 1110, 1112, 1131, 1137, 5107 (West 2014); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2015).

5. The criteria for service connection for a right shoulder disorder have not been met. 38 U.S.C.A. §§ 1110, 1112, 1131, 1137, 5107 (West 2014); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2015).

6. The criteria for service connection for a left shoulder disorder have not been met. 38 U.S.C.A. §§ 1110, 1112, 1131, 1137, 5107 (West 2014); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.310 (2015).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

Duty to Notify and Assist

Under the Veterans Claims Assistance Act of 2000 (VCAA) VA has a duty to notify and assist a claimant in the development of a claim. 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5106, 5107, and 5126 (West 2014); 38 C.F.R. §§ 3.102, 3.156(a), 3.159, and 3.326(a) (2015).

The notice requirements of the VCAA require VA to notify a claimant of what information or evidence is necessary to substantiate the claim; what subset of the necessary information or evidence, if any, the claimant is to provide; and what subset of the necessary information or evidence, if any, the VA will attempt to obtain. 38 C.F.R. § 3.159(b) (2015). VCAA notice was provided in May 2009 and December 2014 letters. The case was last readjudicated in February 2015.

The Veteran was afforded a hearing before the Board, at which he presented oral testimony in support of his claims. In *Bryant v. Shinseki*, 23 Vet. App. 488 (2010), the Court held that 38 C.F.R. § 3.103(c)(2) requires that the Veterans Law Judge (VLJ) who chairs a hearing explain the issues and suggest the submission of

evidence that may have been overlooked. Here, the VLJ identified the issues and the Veteran testified as to in-service events, symptomatology and treatment history for his claimed conditions. Neither the Veteran nor his representative has asserted that VA failed to comply with 38 C.F.R. § 3.103(c)(2) or identified any prejudice in the conduct of the Board hearing. The hearing focused on the elements necessary to substantiate the claims and the Veteran testified as to those elements. As such, the Board finds that there is no prejudice to the Veteran in deciding this case and that no further action pursuant to *Bryant* is necessary.

Concerning the duty to assist, the record also reflects that VA has made reasonable efforts to obtain relevant records adequately identified by the Veteran including service treatment records (STRs), post-service treatment records, Social Security Administration records, and VA examination reports.

The Board also notes that actions requested in the prior remand have been undertaken. Indeed, VCAA notice was provided as requested, VA medical records were obtained, and VA medical opinions were obtained. Accordingly, the Board finds that there has been substantial compliance with the prior remand instructions and no further action is necessary. *See D'Aries v. Peake*, 22 Vet. App. 97 (2008) (holding that only substantial, and not strict, compliance with the terms of a Board remand is required pursuant to *Stegall v. West*, 11 Vet. App. 268 (1998)).

With regard to the claims for service connection for a cervical spine disability and bilateral shoulder disabilities, a VA examination is not required in the absence of competent and credible evidence showing an event, disease, or injury during the Veteran's service or relating the current cervical spine and bilateral shoulder disabilities to the Veteran's service or a service-connected disorder. Thus, VA medical examination is not required to evaluate the claims. *McLendon v. Nicholson,* 20 Vet. App. 79 (2006); 38 U.S.C.A. § 5103A(d)(2) (West 2014); 38 C.F.R. § 3.159(c)(4)(i) (2015).

VA has substantially complied with the notice and assistance requirements and the appellant is not prejudiced by a decision on the claim at this time. *See Pelegrini*, 18 Vet. App. at 121.

Service Connection

Service connection may be established for a disability resulting from disease or injury incurred in or aggravated by service. 38 U.S.C.A. §§ 1110, 1131; 38 C.F.R. § 3.303. Evidence of continuity of symptomatology from the time of service until the present is required where the chronicity of a chronic disorder manifested during service either has not been established or might reasonably be questioned. 38 C.F.R. § 3.303(b); *see also Walker v. Shinseki*, 708 F.3d 1331, 1340 (Fed. Cir. 2014) (holding that only conditions listed as chronic diseases in § 3.309(a) may be considered for service connection under 38 C.F.R. § 3.303(b) (2014). Regulations also provide that service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disability was incurred in service. 38 C.F.R. § 3.303(d).

Generally, in order to prove service connection, there must be competent, credible evidence of (1) a current disability, (2) in-service incurrence or aggravation of an injury or disease, and (3) a nexus, or link, between the current disability and the in-service disease or injury. *See, e.g., Davidson v. Shinseki*, 581 F.3d 1313 (Fed. Cir. 2009); *Pond v. West*, 12 Vet. App. 341 (1999).

Moreover, where a veteran served continuously for 90 days or more during a period of war, or during peacetime service after December 31, 1946, and arthritis becomes manifest to a degree of 10 percent within one year from date of termination of such service, such diseases shall be presumed to have been incurred in service, even though there is no evidence of such diseases during the period of service. This presumption is rebuttable by affirmative evidence to the contrary. 38 U.S.C.A. §§ 1101, 1112, 1113, 1137 (West 2014); 38 C.F.R. §§ 3.307, 3.309 (2015).

Service connection may be established for disability that is proximately due to or the result of a service-connected disability. 38 C.F.R. § 3.310(a) (2015). Further, a disability that is aggravated by a service-connected disability may be service connected to the degree that the aggravation is shown. 38 C.F.R. § 3.310 (2015); *Allen v. Brown*, 7 Vet. App. 439 (1995). However, VA will not concede that a

nonservice-connected disease or injury was aggravated by a service-connected disease or injury unless the baseline level of severity of the nonservice-connected disease or injury is established by medical evidence created before the onset of aggravation or by the earliest medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice- connected disease or injury. 38 C.F.R. § 3.310 (2015).

Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under the laws administered by VA. VA shall consider all information and medical and lay evidence of record. Where there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, VA shall give the benefit of the doubt to the claimant. 38 U.S.C.A. § 5107 (West 2014); 38 C.F.R. § 3.102 (2015); *see also Gilbert v. Derwinski*, 1 Vet. App. 49, 53 (1990). To deny a claim on its merits, the evidence must preponderate against the claim. *Alemany v. Brown*, 9 Vet. App. 518, 519 (1996), *citing Gilbert*, 1 Vet. App. at 54.

The Board has reviewed all the evidence in the record. Although the Board has an obligation to provide adequate reasons and bases supporting this decision, there is no requirement that the evidence submitted by the appellant or obtained on his behalf be discussed in detail. Rather, the Board's analysis below will focus specifically on what evidence is needed to substantiate the claims and what the evidence in the claims file shows, or fails to show, with respect to the claims. *See Gonzales v. West,* 218 F.3d 1378, 1380-81 (Fed. Cir. 2000) and *Timberlake v. Gober*, 14 Vet. App. 122, 128-30 (2000).

Right Knee Disability

The Veteran claims entitlement to service connection for a right knee condition as due to service or in the alternative, as secondary to the service-connected right ankle disability. Specifically, the Veteran has asserted that due to the service-connected right ankle disability he developed an altered gait, painful weight-bearing and overuse, which caused and/or aggravated his right knee disability.

In this case, the medical evidence shows that the Veteran has a right knee disorder. VA and private treatment records documented degenerative changes in the right knee, and on VA examination in January 2015 the examiner diagnosed degenerative right knee osteoarthritis. Thus, the remaining question before the Board is whether such disability is related to service. Upon review of the record, the Board finds that the most probative evidence is against the claim.

The service treatment records contain no complaints, diagnosis or findings pertaining to the right knee. After service, in March 1991 the Veteran's right knee was found to be tender after the he fell through a floor in his trailer. February 2010 x-rays of the right knee revealed moderate degenerative joint disease. The assessment was right knee osteoarthritis.

As a chronic right knee disorder was not shown in service, and arthritis was not shown within one year following discharge from service, competent evidence linking the current disability to service is needed to substantiate the claim. On the question of a link between the current right knee disability and service or the service-connected right ankle disorder, there is evidence in favor and against the claim.

The Veteran underwent a VA examination in January 2015. Following an examination of the Veteran and a review of the claims file, the examiner opined that right knee joint osteoarthritis was less likely as not due to active military service or were otherwise etiologically related to service. The examiner further addressed the Veteran's contentions regarding secondary service connection, and concluded that the right knee joint disability was less likely as likely as not caused by or aggravated by the service-connected right ankle disability.

The examiner noted that the service treatment records were silent for any evaluation or treatment for the claimed right knee condition. One report documented removal of a wart from the skin at the right knee area, but nothing having anything to do with the right knee joint. Furthermore, the examiner noted there simply was no objective evidence that the service-connected right ankle condition caused or

aggravated the claimed right knee condition because there was no history of any trauma or fracture to the right knee due to the right ankle condition, nor was there leg length discrepancy or severe lurching of gait, as due to the right ankle, that would be productive of exerting severe or unusual stress on the right knee. Significantly, review of evidence recorded the presence of multiple other likely etiologies for the right knee condition including post-service injuries incurred when the Veteran jumped off a two story balcony in 2001, or fell through the floor of his trailer in 1991, as well lifestyle, morbid obesity, and aging. In this regard, the examiner noted that imaging revealed widespread age related arthritis. In sum, the examiner determined that there was no objective evidence that the claimed right knee condition was related to or aggravated by the service-connected right ankle condition.

The Veteran's private orthopedic specialist submitted a statement dated in May 2015, noting that he has cared for the Veteran since April 2015. The physician reported having reviewed medical records from 1987 to the present, as well as pertinent parts of the Veteran's military record, and opined that it was at least as likely as not that the Veteran's right knee pain, diagnosed as severe degenerative joint disease with osteoarthritic changes, marginal and patellofemoral osteophyte formation, and subchondral cysts and sclerosis, was caused or worsened by the service-connected right ankle disability. The physician further noted that more likely than not the physical traumas suffered during the Veteran's military service, as noted in his records, contributed to, and aggravated the totally disabling knee condition.

Although the May 2015 statement was prepared by a physician, it is conclusory and it does not account for the lack of clinical findings pertaining to the right knee in service, or the post-service medical evidence which reflects post-service right knee trauma. Significantly, while the May 2015 statement causally associates the right knee disability with the service-connected right ankle condition, it failed to provide an explanation in support of the opinion. Accordingly, the private medical opinion by the Veteran's treating orthopedic specialist is assigned little probative weight. *See Nieves-Rodriguez v. Peake*, 22 Vet. App. 295, 302-04 (2008) (holding that it is the factually accurate, fully articulated, sound reasoning for the conclusion that

contributes to the probative value of a medical opinion); *see also Stefl v. Nicholson,* 21 Vet. App. 120, 124 (2007) ("[A] medical opinion... must support its conclusion with an analysis that the Board can consider and weigh against contrary opinions.").

By contrast, the January 2015 VA examiner's opinion was based on examination of the Veteran and a thorough review of the claims file, and the examiner provided adequate rationale for the opinion provided. Moreover, the opinions are consistent with the medical evidence in the claims file. Thus, the Board finds that the January 2015 VA examiner's opinion is entitled to great probative weight. *See Nieves-Rodriguez v. Peake, supra.*

To the extent that the Veteran himself believes that his current knee disability is related to service or service-connected right ankle disability, the Veteran has not shown that he has specialized training sufficient to render such an opinion. Accordingly, his opinion as to the diagnosis or etiology of his knee disorder is not competent medical evidence, as such questions require medical expertise to determine. *See Jandreau v. Nicholson*, 492 F.3d 1372, 1376-77 (Fed. Cir. 2007) (noting general competence to testify as to symptoms but not to provide medical diagnosis). The Board finds the opinion of the VA examiner to be significantly more probative than the Veteran's lay contentions.

In summary, there is no competent evidence of arthritis of the right knee in service or within one year following discharge from service. Thus, the provisions regarding presumptive service connection or continuity are not for application. *See Walker*, 708 F.3d at 1340 (holding that only conditions listed as chronic diseases in 38 C.F.R. § 3.309(a) may be considered for service connection under 38 C.F.R. § 3.303(b) (2015). Moreover, the most probative and persuasive evidence is against a finding that his current right knee disorder is related to service, or caused or aggravated by the service-connected right ankle. Accordingly, service connection is denied.

In reaching this decision, the Board has considered the applicability of the benefit of the doubt doctrine. However, the preponderance of the evidence is against the Veteran's claim for service connection. As such, that doctrine is not applicable in the instant appeal, and the claim must be denied. *See* 38 U.S.C.A. § 5107(b) (West

2014); *Ortiz v. Principi*, 274 F.3d 1361, 1364 (Fed. Cir. 2001); *Gilbert v. Derwinski*, 1 Vet. App. 49, 55-56 (1990).

Lumbosacral Spine Disorder and Left Ankle Disability

The Veteran claims entitlement to service connection for a lumbosacral spine disorder and left ankle disability, as due to service or as secondary to the service-connected right ankle disability. Specifically, the Veteran has asserted that due to the service-connected right ankle disability he developed an altered gait, painful weight-bearing and overuse, which caused and/or aggravated his left ankle disability and lumbosacral spine disorder.

In this case, the medical evidence shows that the Veteran has a current lumbosacral spine disability and left ankle condition. VA and private treatment records documented degenerative changes in the lumbosacral spine and the left ankle, and on VA examination in January 2015 the examiner diagnosed degenerative arthritis of the spine and left ankle. Thus, the remaining question before the Board is whether such disabilities are related to service. Upon review of the record, the Board finds that the most probative evidence is against the claims.

The service treatment records show that in an October 1972 report of physical examination, the Veteran reported being unsure as to a history of recurrent back pain. On examination his spine was evaluated as normal. In July 1974 and July 1975, the Veteran was seen for complaints of swollen and painful ankles with edema. Examination of the ankles was normal. In October 1974 the Veteran was treated for low back pain. On separation examination in October his spine was evaluated as normal. In September 1980, the Veteran was treated for low back pain. The clinician who evaluated the Veteran in September 1980 initially indicated that the etiology of the back pain was unknown and was possibly due to a urinary tract infection.

After service, in December 1991 he was seen for pain in the left foot. An assessment of possible arthritis or gout was noted. An August 1995 radiological report of the lumbosacral spine recorded degenerative changes and mild disc

narrowing, as well as mild degenerative changes in the left ankle. On VA examination in December 2009, the Veteran was diagnosed with lumbosacral strain. Left foot x-rays in June 2012 showed mild to moderate osteoarthritis and possible old trauma, enthesophytes on left calcaneus, and mild osteoarthritis.

Thus, chronic back and left ankle conditions were not shown in service, nor was arthritis shown within one year following discharge from service. Accordingly, competent medical evidence linking the conditions to service or to a service-connected disability is necessary to substantiate the claim for service connection. However, the most probative evidence of record is against such a finding.

On VA examination in December 2009, the examiner opined that it was less likely as not that the Veteran's back disability was related to the complaints of back pain in service. The examiner explained that while the Veteran was treated for back pain during service in September 1980, and there was some mention of intermittent chronic back pain, the onset or frequency of this back pain was not noted. The examiner noted the Veteran went on to serve an additional six years without any mention of additional back problems.

The examiner also diagnosed left ankle strain and opined that it was less likely as not that the Veteran's left ankle disability was related to the complaints of left ankle pain in service. The examiner noted that the Veteran was treated for swelling in the left ankle in July 1975. There was swelling in both ankles at that time, yet his physical examination was normal. There was no other mention of left ankle problems. Thus there was no indication of a chronic left ankle problem dating back to service.

In an addendum report dated in January 2010, the VA examiner concluded that it was less likely as not that the Veteran's claimed left ankle condition was secondary to the service-connected residuals of right ankle fracture. The examiner explained that the Veteran had post-traumatic arthritis in his right ankle and limitation in range of motion. This could cause an increased strain on other lower extremity joints. However, given that it had been 12 years since release from active duty there were also many other potential sources for the Veteran's left ankle strain.

Therefore it was possible but not at least as likely as not that the Veteran's claimed left ankle condition was secondary to his service connected right ankle condition.

The Veteran underwent a VA examination in January 2015. Following an examination of the Veteran and a review of the claims file, the examiner opined that degenerative arthritis of the spine and degenerative arthritis of the left ankle, were less likely as not due to active military service or were otherwise etiologically related to service. The examiner further addressed the Veteran's contentions regarding secondary service connection, and concluded that degenerative arthritis of the spine and degenerative arthritis of the left ankle were less likely as likely as not caused by or aggravated by the service-connected right ankle disability.

With regard to the lumbar spine disability, the examiner noted that the service treatment records contained complaints of back pain in 1974 and 1980, both times with normal back examinations and suspected to be either associated with urine infection, or mechanical type/soft tissue pain. An August 1995 Medical Assessment was silent for claimed back condition and x-rays for unrelated left hip discomfort showed incidental degenerative changes in the lumbar spine. The examiner explained that mechanical type back pain or lumbosacral strain were associated with episodes of acute back pain with specific activities or events, such as heavy objects or overuse, which were generally transient, self-limited and responded to rest and medication. Different episodes were caused by and specific to different activities at different times, and were not related to nor caused by other prior episodes. There was no scientific evidence that it caused degenerative disease of the spine. The examiner concluded that there was no credible evidence to attribute the claimed back condition to active duty. Moreover, there was no history of fracture of the lumbosacral spine, or evidence of secondary arthritis due to the right ankle condition, or evidence a leg length discrepancy or severe lurching of gait as due to the right ankle, that would be productive of exerting severe or unusual stress on the lumbar spine. The examiner attributed the back condition to other likely causes, to include aging compounded by morbid obesity, life style, and daily stresses accumulated over the many years after separation from service. Moreover, the examiner concluded that there was no objective evidence that the claimed

back condition was related to or aggravated by the service connected right ankle condition.

Concerning the left ankle disability, the examiner noted that the service treatment records documented two episodes of left ankle pain in 1974 and 1975, with normal examinations, and no mention of abnormalities after x-rays were ordered. Left ankle degenerative arthritis was documented on imaging in 1995, associated with an accident of twisting his left ankle during recreational activities. The examiner concluded that there was no credible basis to attribute the current left ankle condition to active duty. Additionally, the left ankle arthritis was shown to be primary, that is, due to fractures or other trauma, as opposed to secondary to the right ankle. Moreover, there was no leg length discrepancy or severe lurching of gait exerting severe or unusual stress on the left ankle. The examiner further found that the Veteran's left ankle condition was more likely due to aging, compounded by morbid obesity, life style, and daily stresses accumulated over the many years after separation from service. There was no objective evidence that the claimed left ankle condition was related to or aggravated by the service-connected right ankle condition.

The 2015 VA examiner's opinions were based on a thorough review of the claims file and provided a detailed rationale for the opinions provided. The opinions are well reasoned, detailed, consistent with other evidence of record, and included consideration of the relevant history. Accordingly, the opinions of are entitled to great probative weight. *See Nieves-Rodriguez v. Peake*, *supra*.

The Board acknowledges the May 2015 statement from the Veteran's treating orthopedic specialist, wherein the physician indicated he had reviewed medical records from 1987 to the present as well as pertinent parts of the Veteran's military record, and opined that the Veteran had multiple medical conditions that were more likely than not secondary to or aggravated by the right ankle injury. However, the only disabilities mentioned in that document were the right ankle and the right knee. To the extent that document has been offered as support for claims other than the right knee, the lack of identified disabilities results in the statement lacking any probative value. *See Stefl v. Nicholson*, 21 Vet. App. 120, 124 (2007) ("[A] medical

opinion ... must support its conclusion with an analysis that the Board can consider and weigh against contrary opinions.").

To the extent that the Veteran himself believes that his current low back disability and left ankle disability are related to service or service-connected right ankle disability, the Veteran has not shown that he has specialized training sufficient to render such an opinion. Accordingly, his opinion as to the diagnosis or etiology of these conditions is not competent medical evidence, as such questions require medical expertise to determine. *See Jandreau*, 492 F.3d at 1376-77. The Board finds the opinion of the VA examiner to be significantly more probative than the Veteran's lay contentions.

In summary, there is no competent evidence of arthritis of the spine or left ankle in service or within one year following discharge from service. Thus, the provisions regarding presumptive service connection and continuity are not for application. *See Walker*, 708 F.3d at 1340 (holding that only conditions listed as chronic diseases in 38 C.F.R. § 3.309(a) may be considered for service connection under 38 C.F.R. § 3.303(b) (2015)). Moreover, the most probative and persuasive evidence is against a finding that his current lumbosacral spine and left ankle disorders are related to service or caused or aggravated by a service-connected disability. Accordingly, service connection is denied.

Therefore, the Board finds that the preponderance of evidence is against a finding of service connection and the claims must be denied. *See* 38 U.S.C.A. § 5107(b) (West 2014); *Ortiz, supra; Gilbert, supra.*

Cervical Spine Disability and Bilateral Shoulder Disabilities

The Veteran claims entitlement to service connection for a cervical spine disability and bilateral shoulder disabilities as due to service or the service-connected right ankle disability.

The evidence shows that during the pendency of this appeal, the Veteran has been diagnosed with and treated for degenerative joint disease of the shoulders and spine.

While it is unclear whether there is arthritis in the cervical spine, assuming, without conceding, that the Veteran has a disability of the cervical spine, the most probative evidence is against the claims for service connection for a bilateral shoulder disorder and cervical spine disability.

The Veteran's service treatment records contain no complaints, findings or diagnosis consistent with a right or left shoulder disability or a cervical spine disorder. After service, VA treatment records after 2006 documented complaints and treatment for arthralgias affecting multiple joints, including the neck and shoulders. The Veteran reported injuring his neck when he fell on a boat. Private treatment report in February 2010 documented complaints of shoulder and cervical spine pain. A June 2012 noted that recent x-rays revealed degenerative arthritis of the shoulder.

As arthritis was not shown in service or within one year following discharge from service, competent evidence linking the current disability to service or service-connected disability is needed to substantiate the claims. Here, there is no competent medical opinion of record linking current cervical spine or left shoulder disorders to service or to a service-connected disability.

While the Veteran may believe that his current cervical spine disability and bilateral shoulder disorders are related to in service or the service-connected right ankle disability, as a lay person, he has not been shown to have specialized training sufficient to render such an opinion. *See Jandreau, supra.* In this regard, the diagnosis and etiology of musculoskeletal disorders of the spine and shoulders requires medical testing and expertise to determine. Thus, his lay opinion regarding the etiology of the claimed cervical spine disability and bilateral shoulder disorders is not competent medical evidence.

Here, there is simply no competent and probative evidence indicating the Veteran's cervical spine and bilateral shoulder disorders are related to service or caused or aggravated by the service-connected right ankle disability. While in May 2015 the Veteran's treating orthopedist opined that the Veteran had multiple medical conditions that were more likely than not secondary to or aggravated by the right

ankle injury, he did not mention the neck or shoulders anywhere in the document. As such, the document does not serve as support for the claims for the neck and shoulders. *See Stefl*, 21 Vet. App. at 124.

In summary, there is no competent evidence of a chronic neck or shoulder disability during service, nor was arthritis of the cervical spine or shoulders shown within one year following discharge from service. Moreover, there is no competent and probative medical evidence that supports the claims for service connection on a direct or secondary basis. Accordingly, the preponderance of the evidence is against the claim, and service connection for a cervical spine disability and bilateral shoulder disabilities is denied.

In reaching the above conclusion, the Board has considered the applicability of the benefit of the doubt doctrine. However, as the preponderance of the evidence is against the claim, that doctrine is not applicable in the instant appeal. *See* 38 U.S.C.A. § 5107(b) (West 2014); *Ortiz*, 274 F.3d at 1364; *Gilbert*, 1 Vet. App. at 55-56.

(CONTINUED ON NEXT PAGE)

ORDER

Service connection for a right knee disorder is denied.

Service connection for a lumbosacral spine disorder is denied.

Service connection for a left ankle disorder is denied.

Service connection for a cervical spine disorder is denied.

Service connection for a right shoulder disorder is denied.

Service connection for a left shoulder disorder is denied.

K. A. BANFIELD
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs

YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (BVA or Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. *The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."*

If you are satisfied with the outcome of your appeal, you do not need to do anything. We will return your file to your local VA office to implement the BVA's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- Appeal to the United States Court of Appeals for Veterans Claims (Court)
- File with the Board a motion for reconsideration of this decision
- File with the Board a motion to vacate this decision
- File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- Reopen your claim at the local VA office by submitting new and material evidence.

There is *no* time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. None of these things is mutually exclusive - you can do all five things at the same time if you wish. However, if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your case because of jurisdictional conflicts. If you file a Notice of Appeal with the Court ***before*** you file a motion with the BVA, the BVA will not be able to consider your motion without the Court's permission.

How long do I have to start my appeal to the court? You have **120 days** from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the Court. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the court. *As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you,* you will have another 120 days from the date the BVA decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, *it is your responsibility to make sure that your appeal to the Court is filed on time.* Please note that the 120-day time limit to file a Notice of Appeal with the Court does not include a period of active duty. If your active military service materially affects your ability to file a Notice of Appeal (e.g., due to a combat deployment), you may also be entitled to an additional 90 days after active duty service terminates before the 120-day appeal period (or remainder of the appeal period) begins to run.

How do I appeal to the United States Court of Appeals for Veterans Claims? Send your Notice of Appeal to the Court at:

Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's website on the Internet at: http://www.uscourts.cavc.gov, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal **with the Court**, not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the BVA to reconsider any part of this decision by writing a letter to the BVA clearly explaining why you believe that the BVA committed an obvious error of fact or law, or stating that new and material military service records have been discovered that apply to your appeal. It is important that such letter be as specific as possible. A general statement of dissatisfaction with the BVA decision or some other aspect of the VA claims adjudication process will not suffice. If the BVA has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Issues not clearly identified will not be considered. Send your letter to:

Director, Management, Planning and Analysis (014)
Board of Veterans' Appeals
810 Vermont Avenue, NW
Washington, DC 20420

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Remember, the Board places no time limit on filing a motion for reconsideration, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to vacate? You can file a motion asking the BVA to vacate any part of this decision by writing a letter to the BVA stating why you believe you were denied due process of law during your appeal. *See* 38 C.F.R. 20.904. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address above for the Director, Management, Planning and Analysis, at the Board. Remember, the Board places no time limit on filing a motion to vacate, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to revise the Board's decision on the basis of clear and unmistakable error? You can file a motion asking that the Board revise this decision if you believe that the decision is based on "clear and unmistakable error" (CUE). Send this motion to the address above for the Director, Management, Planning and Analysis, at the Board. You should be careful when preparing such a motion because it must meet specific requirements, and the Board will not review a final decision on this basis more than once. You should carefully review the Board's Rules of Practice on CUE, 38 C.F.R. 20.1400 -- 20.1411, and *seek help from a qualified representative before filing such a motion.* See discussion on representation below. Remember, the Board places no time limit on filing a CUE review motion, and you can do this at any time.

How do I reopen my claim? You can ask your local VA office to reopen your claim by simply sending them a statement indicating that you want to reopen your claim. However, to be successful in reopening your claim, you must submit new and material evidence to that office. *See* 38 C.F.R. 3.156(a).

Can someone represent me in my appeal? Yes. You can always represent yourself in any claim before VA, including the BVA, but you can also appoint someone to represent you. An accredited representative of a recognized service organization may represent you free of charge. VA approves these organizations to help Veterans, service members, and dependents prepare their claims and present them to VA. An accredited representative works for the service organization and knows how to prepare and present claims. You can find a listing of these organizations on the Internet at: http://www.va.gov/vso. You can also choose to be represented by a private attorney or by an "agent." (An agent is a person who is not a lawyer, but is specially accredited by VA.)

If you want someone to represent you before the Court, rather than before the VA, you can get information on how to do so at the Court's website at: http://www.uscourts.cavc.gov. The Court's website provides a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to the represent appellants. You may also request this information by writing directly to the Court. Information about free representation through the Veterans Consortium Pro Bono Program is also available at the Court's website, or at: http://www.vetsprobono.org, mail@vetsprobono.org, or (888) 838-7727.

Do I have to pay an attorney or agent to represent me? An attorney or agent may charge a fee to represent you after a notice of disagreement has been filed with respect to your case, provided that the notice of disagreement was filed on or after June 20, 2007. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636. If the notice of disagreement was filed before June 20, 2007, an attorney or accredited agent may charge fees for services, but only after the Board first issues a final decision in the case, and only if the agent or attorney is hired within one year of the Board's decision. *See* 38 C.F.R. 14.636(c)(2).

The notice of disagreement limitation does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court. VA cannot pay the fees of your attorney or agent, with the exception of payment of fees out of past-due benefits awarded to you on the basis of your claim when provided for in a fee agreement.

Fee for VA home and small business loan cases: An attorney or agent may charge you a reasonable fee for services involving a VA home loan or small business loan. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636(d).

Filing of Fee Agreements: In all cases, a copy of any fee agreement between you and an attorney or accredited agent must be sent to the Secretary at the following address:

Office of the General Counsel (022D)
810 Vermont Avenue, NW
Washington, DC 20420

The Office of the General Counsel may decide, on its own, to review a fee agreement or expenses charged by your agent or attorney for reasonableness. You can also file a motion requesting such review to the address above for the Office of the General Counsel. *See* 38 C.F.R. 14.636(i); 14.637(d).