

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 16-0003

LLOYD MAYS

APPELLANT,

v.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before GREENBERG, *Judge*.

ORDER

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

On July 3, 2015, the appellant, Lloyd Mays, through counsel, appealed a November 13, 2014, Board of Veterans' Appeals (Board) decision that denied entitlement to restoration of a 70% disability rating for bilateral hearing loss. The appellant filed his brief on May 18, 2016, and the Secretary filed his brief on September 1, 2016. On September 26, 2016, the Secretary submitted to the Court the Record of Proceedings, stating that the record included a copy of the Board decision under appeal, all documents cited to by the parties in their respective briefs, and any other documents before the Board otherwise relevant to the issues of the case.

In the Board decision, the Board stated that "[t]he March 2009 and May 2009 VA treatment records show that the Veteran primarily did not wear the hearing aids because he worked outside with heavy equipment and was around loud noises on most days so the hearing aids caused the noise to be too loud." R. at 9. However, the Record of Proceedings provided by the Secretary lacks any of the appellant's treatment records showing appellant's exposure to these loud noises. The Court discerns that these treatment records, contained in the Record Before the Agency and specifically mentioned in the Board decision on appeal (*see* R. at 9), are relevant to the issues of the case, and that their inclusion is necessary for the Secretary to comply with U.S. VET. APP. R. 28.1(a)(1)(C).

Accordingly, it is

ORDERED that the Secretary, within 2 days, supplement the Record of Proceedings to satisfy the requirements of U.S. VET. APP. R. 28.1(a), including all evidence related to noise exposure that is contemporaneous with the May 2009 VA examination.

DATED: October 24, 2016

BY THE COURT:

A handwritten signature in cursive script, appearing to read "William S. Greenberg".

WILLIAM S. GREENBERG
Judge

Copies to:

Michael R. Viterna

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