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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 15-4813

ANTONIO MORALES, JR., APPELLANT,

v.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before KASOLD, *Judge*.

MEMORANDUM DECISION

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

KASOLD, *Judge*: Veteran Antonio Morales, Jr., appeals through counsel that part of an October 30, 2015, decision of the Board of Veterans' Appeals (Board) that denied a schedular rating in excess of 50% for generalized anxiety disorder prior to October 3, 2012. Mr. Morales argues that the Board erred by (1) violating *Vazquez-Claudio v. Shinseki*, 713 F.3d 1112 (Fed. Cir. 2013), (2) assigning an effective date based on the date of a medical examination rather than when he reported the onset of his symptoms, (3) considering the ameliorative effects of medication, (4) relying on the medical examiners's conclusions regarding the severity of his disability, and (5) providing inadequate reasons or bases for its decision. The Secretary disputes these arguments. Single-judge disposition in this case is appropriate. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons discussed below, that part of the Board decision on appeal will be affirmed.

In support of his first argument, Mr. Morales contends that the Board failed to consider the import of the severity, frequency, and duration of his symptoms, as required by *Vazquez-Claudio*, *supra*. At the outset, it is noted that the Board is presumed to have considered the entire record. *See Newhouse v. Nicholson*, 497 F.3d 1298, 1302 (Fed. Cir. 2007) (explaining that the Board is presumed to have considered all record evidence). Moreover, here the Board noted, *inter alia*, that Mr. Morales had excessive worrying, chronic sleep impairment, mild memory loss, regular

nightmares and sweats, exaggerated startle response, periodic anxiety attacks, and continuous panic or depression. The Board also noted that he had significant irritability, obsessive-compulsive tendencies, and social issues with his coworkers, and Global Assessment Functioning scores reflecting mild or moderate symptoms. Based on the record or proceedings, the Board fairly summarized Mr. Morales's symptoms as well as their severity, frequency, and duration when evaluating his level of social and occupational impairment. In sum, Mr. Morales fails to demonstrate that the Board (1) did not consider the severity, frequency, and duration of his symptoms, or (2) violated *Vazquez-Claudio*. See *Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (appellant bears burden of demonstrating error on appeal), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table).

In support of his second argument, Mr. Morales asserts that the Board erred by assigning an effective date based on an October 2012 medical report documenting his symptoms because the Board did not consider that he (1) reported symptoms before that examination, and (2) endorsed having symptoms retrospectively during that examination. As noted above, however, the Board is presumed to have considered the entire record, and the Board fairly summarized Mr. Morales's symptoms. Moreover, reading the Board's statement as a whole, see *Janssen v. Principi*, 15 Vet.App. 370, 379 (2001) (rendering a decision on the Board's statement of reasons or bases "as a whole"), the Board noted the October 2012 medical report and the fact Mr. Morales reported a history of his symptoms, but the Board gave less weight to that report than it gave to record evidence reflecting that (1) Mr. Morales was married for decades and able to keep busy with chores around the house, and (2) Mr. Morales's self-reported history of symptoms in October 2012 was inconsistent with earlier medical reports, as opined by a medical examiner in a November 2012 medical report.

In sum, Mr. Morales fails to demonstrate that the Board failed to consider the symptoms reported in the October 2012 report, and he otherwise fails to demonstrate that the Board clearly erred in its assignment of weight to the evidence or its award of October 3, 2012, as the proper effective date for a 70% rating. See *Hilkert supra*; see also *Canady v. Nicholson*, 20 Vet.App. 393, 398 (2006) (Court reviews Board's effective-date determination for clear error); *Wood v. Derwinski*, 1 Vet.App. 190, 193 (1991) (stating that the Board's assessment of the credibility and weight to be given to the evidence is a finding of fact subject to the "clearly erroneous" standard of review);

Gilbert v. Derwinski, 1 Vet.App. 49, 52 (1990) ("A finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948))).

In support of his third argument, Mr. Morales contends that the Board violated *Jones v. Shinseki*, 26 Vet.App. 56 (2012), by considering the ameliorative effects of medication. *Jones*, however, proscribes considering the effect of medication only when the effect is not part of the rating criteria. *See id.* at 63. Here, the rating criteria for generalized anxiety disorder includes consideration of the effects of medication. *See* 38 C.F.R. § 4.130, DC 9400 (2016) (providing a noncompensable rating when "symptoms are not severe enough . . . to require continuous medication" and a 10% rating when "symptoms [are] controlled by continuous medication"). Succinctly stated, *Jones* is not for application here, and Mr. Morales fails to demonstrate Board error. *See Hilkert, supra.*

In support of his fourth argument, Mr. Morales asserts that the Board erred by relying on the medical examiners's conclusions regarding the severity of Mr. Morales's disability because such reliance reflects an impermissible delegation of the Board's duty to determine his degree of disability. Contrary to Mr. Morales's assertion, the Board did not merely adopt the examiners's conclusions regarding Mr. Morales's disability level but rather fairly summarized the symptoms and weighed the evidence to determine his level of impairment. Indeed, the Board explained that a higher rating was not warranted because he did not have symptoms contemplated by a 70% rating and his disability level more closely approximated that contemplated by a 50% rating prior to October 3, 2012. In sum, Mr. Morales fails to demonstrate that the Board improperly relied on the medical reports of record or otherwise delegated its responsibility to determine the severity of his disability. *See id.*

In support of his fifth argument, Mr. Morales contends that the Board failed to reconcile its reliance on the examiners's conclusions that he had mild to moderate impairment with the evidence of record reflecting greater impairment. As indicated above, however, the Board did not rely on the examiners's conclusions regarding Mr. Morales's ultimate disability level but rather fairly summarized Mr. Morales's symptoms and independently determined the severity of his disability based on the record evidence. The Board's discussion of Mr. Morales's symptoms and explanation

for why such symptoms more nearly approximates a 50% rating is understandable and facilitative of judicial review. *See Allday v. Brown*, 7 Vet.App. 517, 527 (1995) (holding that the Board's statement "must be adequate to enable a claimant to understand the precise basis for the Board's decision, as well as to facilitate review in this Court").

Also in support of his fifth argument, Mr. Morales asserts that the Board failed to explain its rejection of potentially favorable evidence concerning his level of impairment. Mr. Morales's assertion, however, is baldly presented, and he fails to explain what evidence was favorable but rejected by the Board. Furthermore, reading the Board decision as a whole, *see Janssen, supra*, the Board did not reject any evidence; rather, as noted above, the Board (1) assigned less weight to self-reported history of symptoms recorded in the October 2012 medical report and (2) found that Mr. Morales's disability and associated symptoms supported the assigned 50% disability rating but did not reflect the level of severity required for a 70% or higher rating prior to October 3, 2012. Succinctly stated, Mr. Morales fails to demonstrate Board error. *See Hilkert, supra*.

Upon consideration of the foregoing, that part of the October 30, 2015, Board decision on appeal is AFFIRMED.

DATED: November 29, 2016

Copies to:

Robert V. Chisholm

VA General Counsel (027)