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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 15-3845

CHRISTOPHER J. OSBORN, APPELLANT,

v.

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

Before GREENBERG, *Judge*.

MEMORANDUM DECISION

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

GREENBERG, *Judge*: The appellant, Christopher J. Osborn, appeals through counsel an August 18, 2015, Board of Veterans' Appeals (Board) decision that denied entitlement to service connection for (1) residuals of a traumatic brain injury (TBI) for a left eye disability.¹ Record (R.) at 2-7. The appellant argues that the Board misinterpreted and misapplied the law when it determined that the appellant's in-service injuries resulted from willful misconduct. For the following reasons, the Court will affirm the August 2015 Board decision.

Justice Alito noted in *Henderson v. Shinseki* that our Court's scope of review in this appeal is "similar to that of an Article III court reviewing agency action under the Administrative Procedure Act, 5 U.S.C. § 706." 562 U.S. 428, 432 n.2 (2011); *see* 38 U.S.C. § 7261. The creation of a special court solely for veterans, and specified relations of veterans, is consistent with congressional intent as old as the Republic. *See Hayburn's Case*, 2 U.S. (2 Dall.) 409, 410 n., 1 L. Ed. 436 (1792) ("[T]he objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress."). "The Court may hear cases by judges sitting alone or in panels, as determined pursuant to procedures established by the Court." 38 U.S.C. § 7254. Accordingly, the statutory

¹ The Board also remanded the appellant's claims for benefits based on service connection for (1) an acquired psychiatric disability; (2) bilateral hearing loss; (3) tinnitus; (4) a left knee disability; and (5) a lower back disability. R. at 8-12. These matters are not currently before the Court. *See Hampton v. Gober*, 10 Vet.App. 481, 482 (1997).

command of Congress that a single judge may issue a binding decision, pursuant to procedures established by the Court, is "unambiguous, unequivocal, and unlimited." *Conroy v. Aniskoff*, 507 U.S. 511, 514 (1993); *see generally Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990).

The appellant served as an infantryman on active duty in the U.S. Army from March 2004 to February 2006. R. at 31 (DD Form 214). In July 2005, the appellant and some friends became intoxicated while "out on the town." R. at 6. At some point, the appellant and his friends went to a party at someone's home—uninvited. R. at 1257. The appellant claimed that they entered the house only to make a phone call and became involved in a fight. R. at 1259. During the fight, the appellant was struck on the left side of his head with a piece of metal rebar and lost consciousness. R. at 1259. The appellant suffered a TBI and damage to his left eye as a result. R. at 1259.

In November 2008, the appellant filed a claim for benefits based on service connection for a TBI and a left eye disability. R. at 1914-23. In March 2009, VA issued a rating decision denying the claim. R. at 1627.

On August 18, 2015, the Board issued its decision on appeal wherein it denied the appellant service connection for a TBI or a left eye disability. R. at 2-15. In reaching its decision, the Board found that alcohol use and intoxication were the proximate causes of the appellant's injuries. R. at 6. The Board determined that the appellant's intoxication directly led to his trespassory presence in the house and to the altercation. R. at 6-7. The Board reasoned that if not for excessive drinking, the appellant would not have been doing what he was doing and would not have sustained the injuries he sustained. R. at 6. Lastly, the Board concluded that the events surrounding the appellant's injuries support a finding that the injuries were a result of appellant's willful misconduct. R. at 7. This appeal ensued.

The Court discerns no clear error in the Board's finding that the appellant is not entitled to benefits based on service connection for a TBI or a left eye injury. *See Hicks v. Brown*, 8 Vet.App. 417, 422 (1995) (Court reviews the Board's rating decisions for clear error); *see also United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). The Board properly found that service connection could be granted only if it was shown that the appellant suffered from a disability resulting from an injury suffered in the line of duty and that the disability was not the a result of wilful misconduct. R. at 6-7. *See* 38 C.F.R. §§ 3.303, 3.301(a), 3.1(n)(2016). The Board found that the appellant's

injuries were the result of his on wilful misconduct, and the appellant has not presented any evidence beyond his own characterization of the events of that evening, which are contradicted by the other evidence of record. R. at 1257-60. Thus, the Court discerns no clear error in the Board's factual determination and the decision is otherwise supported by an adequate statement of reasons or bases. *See* 38 U.S.C. § 7104(d)(1); *Gilbert v. Derwinski*, 1 Vet.App. 49, 56-57 (1990) (finding that Congress mandated by statute that the Board provide a written statement of reasons or bases for its conclusions that is adequate to enable the appellant to understand the precise basis for the Board's decision and to facilitate review in this Court).

Because the Court is remanding the matter, it will not address the appellant's remaining arguments. *See Dunn v. West*, 11 Vet.App. 462, 467 (1998). On remand, the appellant may present, and the Board must consider, any additional evidence and arguments. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002). This matter is to be provided expeditious treatment on remand. *See* 38 U.S.C. § 7112; *see also Hayburn's Case*, 2 U.S. (2 Dall.) at 410, n. ("[M]any unfortunate and meritorious [veterans], whom Congress have justly thought proper objects of immediate relief, may suffer great distress, even by a short delay, and may be utterly ruined, by a long one.")

The Board's decision on appeal is AFFIRMED.

DATED: November 29, 2016

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