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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 15-3197

GREGORY M. HEAL, APPELLANT,

V.

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

Before DAVIS, *Chief Judge.*

MEMORANDUM DECISION

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

DAVIS, *Chief Judge*: U.S. Army veteran Gregory M. Heal appeals through counsel from an April 30, 2015, Board of Veterans' Appeals (Board) decision that denied disability benefits for an acquired psychiatric disorder. For the following reasons, the Court will affirm the Board's April 2015 decision.

I. ANALYSIS

The Board decision here on appeal first concluded that Mr. Heal does not have a current diagnosis of post-traumatic stress disorder (PTSD).[1] In rendering that determination, the Board noted that "[o]ne medical treatment provider, Dr. T.K., and Dr. T.K.'s [p]sychiatric [m]ental [h]ealth [n]urse [p]ractitioner, N.B., have diagnosed the Veteran with PTSD." Record (R.) at 11. The Board noted that the PTSD diagnoses appeared in treatment notes from February 2006 to April 2007, did

[1] The Board recognized current diagnoses of anxiety, depression, and substance abuse disorders, but Mr. Heal limits his specific arguments on appeal to PTSD. To the extent that he vaguely referenced error with respect to service connection for his general acquired psychiatric disorder claim, the Court deems those allegations too vague to warrant further discussion. *See Coker v. Nicholson*, 19 Vet.App. 439, 442 (2006) ("The Court requires that an appellant plead with some particularity the allegation of error so that the Court is able to review and assess the validity of the appellant's arguments."), *rev'd on other grounds sub nom. Coker v. Peake*, 310 F. App'x 371 (Fed. Cir. 2008) (per curiam order).

not address the criteria for PTSD, and did not indicate the stressor on which the diagnosis was based. *Id.* Thus, the Board found those diagnoses outweighed by a March 2012 VA examination report providing "complete and persuasive rationale" and determining that Mr. Heal's then-claimed stressors of his mother's death and in-service teasing were insufficient to support a diagnosis of PTSD. R. at 13.

Other than a single statement that "a competent medical diagnosis of PTSD must be assumed to be consistent with the criteria enumerated in the DSM" (*see* Appellant's Brief (Br.) at 11 (citing *Cohen v. Brown*, 10 Vet.App. 128, 153 (1997))), Mr. Heal presents no argument that the Board should have afforded more weight to the February 2006 to April 2007 diagnoses. Indeed, neither party cited the documents–seemingly the only PTSD diagnoses of record–and the Court is unable to locate the documents in the record of proceedings. Thus, as a preliminary matter, Mr. Heal has failed to carry his burden to demonstrate that the Board's determination that he does not have PTSD is clearly erroneous. *See Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (holding that the appellant has the burden of demonstrating error).

Instead, Mr. Heal focuses his attention on the Board's determination that a third stressor of in-service personal assaults based on his visual impairment,[2] asserted for the first time to a 2013 private medical examiner as the basis for his PTSD, was not credible. The Board based its credibility determination on the following factors: (1) When Mr. Heal described his in-service traumatic events on VA examination in January 2009, he reported only verbal teasing in service; (2) a VA examiner in March 2012 stated that "'[t]he patient indicated that the teasing was verbal. The soldiers did not engage in any physical altercations nor in any threats of physical altercation.'"[3] (R. at 14); and (3) in statements to VA and the Board in March 2011 and January 2015, Mr. Heal identified teasing from other soldiers as his in-service stressful event, but did not report a physical assault. Consequently, the Board stated that considering the evidence, "including the Veteran's own

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[2] Specifically, Mr. Heal reported to a 2013 private medical examiner that he was frequently teased and ridiculed in service for his poor vision and was often beaten because of it. *See* R. at 142. The examiner concluded that "[d]uring Mr. Heal's Army service, he was shunned, beaten, humiliated and marginalized due to his significant visual impairments." R. at 144.

[3] The VA examiner also noted that "teasing and taunting do not meet the first criteria for a diagnosis of [PTSD]." R. at 228.

statement in March 2012 contradicting the assertion that he was physically assaulted in service, the Board finds the Veteran's single, unsubstantiated assertion in July 2013 not credible."[4] *Id.* The Board did not err in considering these bases for impugning Mr. Heal's credibility. *See Buchanan v. Nicholson*, 451 F.3d 1331, 1337 (Fed. Cir. 2006) (allowing the Board to consider conflicting or inconsistent statements when assessing credibility). Moreover, and most damaging to Mr. Heal's claim, is that the 2013 examiner–the only examiner of record privy to Mr. Heal's purported stressor of in-service personal assaults–failed to diagnose him with PTSD. Thus, any error in the Board's credibility determination with regard to his "allegation of PTSD based on personal assault" is necessarily harmless where the Board correctly determined that Mr. Heal does not have a current diagnosis of PTSD. *See Shedden v. Principi*, 381 F.3d 1163, 1166-67 (Fed. Cir. 2004) (requiring a service-connection claim to be supported by, among other things, evidence demonstrating "the existence of a present disability"); *see also* 38 U.S.C. § 7261(b)(2) (requiring the Court to "take due account of the rule of prejudicial error").

Mr. Heal also contends that a February 2013 VA opinion on which the Board relied was inadequate for several reasons that the Court deems unpersuasive. First, Mr. Heal asserts that the examiner "was not apprised of [his] specific service-connection claim for PTSD and, in addition, was unaware of any in-service personal assault." Appellant's Br. at 7. The physician reviewed Mr. Heal's claims file, however, and provided a substantial and thorough description of the history of Mr. Heal's service, his psychological conditions, and his medical records. The physician also acknowledged diagnoses of PTSD, and VA's denial of service connection for PTSD. *See* R. at 174. Thus, the Court is unconvinced that the examiner was unaware of his claim for PTSD. With regard to Mr. Heal's assertion of personal assault, Mr. Heal does not dispute that he claimed to be the victim of personal assault *after* the February 2013 examination. Because an adequate examination takes into account medical history, not prospective allegations, and because the examination report contained a thorough description of Mr. Heal's history, including his involvement in "fights with other soldiers"

[4] The Board noted, however, that Mr. Heal's assertions as to teasing in service "may constitute the requisite in-service event or injury upon which a grant of service connection may be based." R. at 14. Mr. Heal presents no argument with regard to the stressor of "teasing," however, and the Court will not address it further.

(R. at 172; *see* R. at 171-76),[5] Mr. Heal has failed to demonstrate that the examination is inadequate on this basis. *Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007) (quoting *Ardison v. Brown,* 6 Vet.App. 405, 407 (1994) (noting that a medical examination is considered adequate "where it is based upon consideration of the veteran's prior medical history and examinations and also describes the disability, if any, in sufficient detail so that the Board's 'evaluation of the claimed disability will be a fully informed one'")).

Finally, Mr. Heal asserts that because the Board previously remanded the claim, he was entitled to substantial compliance with the remand order. Mr. Heal, who is represented by counsel, neither identified the Board remand order at issue, nor explained how the examination did not comply with any such order. Thus, again, the argument is far too vague to warrant further analysis by the Court. *See Coker*, *supra*.

Lastly, Mr. Heal argues that the Board erred in failing to obtain a new medical opinion to address the relation between his in-service personal assault and his PTSD. *See* Appellant's Br. at 16 (analyzing *McLendon v. Nicholson*, 20 Vet.App. 79 (2006) with respect to PTSD). As stated previously, however, the Board determined that Mr. Heal does not have a diagnosis of PTSD. Thus, remand to address a relationship between personal assault and PTSD is unwarranted.

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[5] The Court disagrees with Mr. Heal that the Board's failure to address a statement of his platoon sergeant undermined the Board's credibility determination or otherwise harmed him. *See Buchanan v. Nicholson*, 451 F.3d 1331, 1337 (Fed. Cir. 2006) (requiring the Board, as factfinder, to determine the credibility of lay evidence); *Arneson v. Shinseki*, 24 Vet.App. 379, 382 (2011) (recognizing that the Board's credibility determinations are subject to a "clearly erroneous" standard of review); *Conway v. Principi*, 353 F.3d 1369, 1374 (Fed. Cir. 2004); *see also* 38 U.S.C. § 7261(b)(2) (requiring the Court to "take due account of the rule of prejudicial error"). As the Secretary notes, the statement appears to be part of misconduct proceedings for, among other things, drug and alcohol abuse and rehabilitation failure (*see* R. at 556-57), "threaten[ing] other soldiers" (R. at 570), and assaulting "one of the company wives" (R. at 558; *see* R. at 563). Indeed, the platoon sergeant's statement addresses Mr. Heal's "unsoldierly manner," his "disregard for discipline," his lack of respect for superiors, and the sergeant's ultimate recommendation that Mr. Heal "should be denied continuance in the U.S. Army." R. at 552. In short, contrary to Mr. Heal's assertion, when read in context, the platoon's sergeant's assertion that Mr. Heal "continues to get involve[d] in fights and arguments with other members of the company" does not support an inference that Mr. Heal was a victim of personal assault as a result of his visual impairment. *Id.* Consequently, the Court is unconvinced that remand for the Board to address the platoon sergeant's statement would serve a useful purpose. *See Soyini v. Derwinski*, 1 Vet.App. 540, 546 (1991) (holding that "strict adherence" to reasons-or-bases requirement where evidence was "overwhelmingly" against the claim would unnecessarily impose additional burdens on the Board with no benefit flowing to the veteran).

II. CONCLUSION

Upon consideration of the foregoing, the April 30, 2015, Board decision is AFFIRMED.

DATED: November 30, 2016

Copies to:

Francis M. Jackson, Esq.

VA General Counsel (027)