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**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

No. 16-0181

GERALD KEELS, 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, Gerald Keels, appeals through counsel a December 8, 2015, Board of Veterans' Appeals (Board) decision that denied him entitlement to a disability rating in excess of 30% for headaches secondary to eye trauma.<sup>1</sup> Record (R.) at 2-10. The appellant argues that the Board (1) erred when it improperly interpreted and applied the law; (2) relied on inadequate VA examination; (3) improperly applied the rating schedule; and (4) prematurely decided not to refer the claims for extraschedular consideration. Appellant's Brief at 7-22. For the following reasons, the Court will vacate the Board's December 2015 decision and remand the matter for further adjudication.

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 other specified relations such as their widows, is consistent

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<sup>1</sup>The Board also remanded the matters of entitlement to (1) a disability rating in excess of 20% for degenerative joint disease of the right ankle with calcaneal spurs; (2) a disability rating in excess of 20% for residuals of a left ankle injury with traumatic arthritis; (3) a disability in excess of 10% for ptosis, left eyelid; and (4) a total disability rating based on individual unemployability due (TDIU). These matters are not currently before the Court. *See Hampton v. Gober*, 10 Vet.App. 481, 482 (1997).

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 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 is a veteran who served honorably in the U.S. Marine Corps from October 1974 until October 1978, as a heavy vehicle operator. R. at 1808 (DD Form 214). In December 1975, the appellant sustained an eye injury and reported blurry vision and the onset of headaches. R. at 1726.

In March 1996, the appellant applied for benefits based on service connection for his headaches. R. at 1727-28. In April 1996, the regional office (RO) granted the appellant service connection for headaches and awarded a 10% disability rating. R. at 1726. In December 1998, the RO increased the appellant's disability rating to 30%. R. at 1308.

In January 2011, the appellant filed for TDIU. R. at 228-30. In June 2012, the appellant underwent a VA examination for an evaluation of his headaches. R. at 160-64. The examiner noted the appellant's sensitivity to light and that when the appellant was exposed to light he developed a headache with burning pain. R. at 161. The examiner noted that these headaches occurred less than once per day and found that the appellant's headaches were not prostrating. R. at 162. But, the examiner provided no additional information regarding the severity or frequency of the appellant's headache condition. R. at 160-64.

In December 2015, the Board denied the appellant a disability rating in excess of 30% for headaches—to include on an extraschedular basis. R. at 7. In reaching its decision the Board relied on the June 2012 VA examination. R. at 6. This appeal ensued.

The Court concludes that the Board provided an inadequate statement of reasons or bases for relying on an inadequate June 2012 VA medical examination. *See Gilbert v. Derwinski*, 1 Vet.App. 49, 56-57 (1990) (detailing that in each of its decisions, the Board is required to provide a written statement of the reasons or bases for its findings and conclusions adequate to enable an

appellant to understand the precise basis for the Board's decision as well as to facilitate review in this Court). The June 2012 VA examination failed to describe the appellant's current disability in adequate detail. *See Stefl v. Nicholson*, 21, Vet.App. 102, 123 (2007)( finding that to be adequate, a medical opinion must "describe the [appellant's] condition in sufficient detail so that the Board's evaluation of the claim may be fully informed"). The examiner noted that the appellant's headaches included eye pain, were not prostrating, and occurred less than once per day. R. at 162. It is unclear, however, based on the findings of the examiner, how often the appellant suffers from headaches; how long the headaches last; and how severe the headaches are, aside from a finding that the headaches were not prostrating and that the appellant did not meet the schedular requirement for a higher rating. *See* R. at 161-67. Remand is required for the Board to order an examination that adequately describes the appellant's condition and symptamatology. *See Stefl, supra*.

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 (1988). 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 409, 410, n. ("[M]any unfortunate and meritorious [veterans], whom Congress have justly thought proper objects of immediate relief, may suffer great distress, even by short delay, and may be utterly ruined, by a long one.").

Based on the foregoing reasons that part of the December 8, 2015, Board decision is VACATED and the matter is REMANDED for readjudication.

DATED: November 30, 2016

Copies to:

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