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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 15-4060

KENT S. HUGHES, APPELLANT,

v.

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

Before LANCE, *Judge*.

MEMORANDUM DECISION

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

LANCE, *Judge*: The appellant, Kent S. Hughes, served in the U.S. Army from March 1972 to June 1973. Record (R.) at 145. He appeals, through counsel, a September 28, 2015, Board of Veterans' Appeals (Board) decision that, in part, denied entitlement to service connection for hypertension and hidradenitis suppurativa.¹ R. at 1-18. Single-judge disposition is appropriate. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). This appeal is timely, and the Court has jurisdiction over the case pursuant to 38 U.S.C. §§ 7252(a) and 7266.

For the reasons that follow, the Court will affirm that part of the September 28, 2015, decision that denied entitlement to service connection for hypertension. In addition, as the appellant presents no argument concerning the Board's denial of entitlement to service connection for hidradenitis suppurativa, the Court holds that he has abandoned the matter and will, accordingly, dismiss the appeal as to that claim. *See Pederson v. McDonald*, 27 Vet.App. 276, 285 (2015) (en banc).

¹ The Court lacks jurisdiction over the claim for entitlement to an initial disability rating greater than 10% for hepatitis C that was remanded, and it will not be addressed further. *See* 38 U.S.C. §§ 7252(a), 7266(a); *Howard v. Gober*, 220 F.3d 1341, 1344 (Fed. Cir. 2000).

I. ANALYSIS

The appellant argues that the Board clearly erred when it determined that VA fulfilled its duty to assist, as a June 2010 VA medical opinion lacked a sufficient rationale and rested on an inaccurate factual premise. Appellant's Brief (Br.) at 4-9. He also contends that the Board failed to provide an adequate statement of reasons or bases to support its decision and "failed to consider the potential application of entitlement to service connection for hypertension on the basis of chronicity." *Id.* at 10, citing 38 C.F.R. § 3.303(b). The Secretary disputes these contentions. Secretary's Br. at 5-13.

A. Adequacy of the June 2010 VA Medical Opinion

The appellant challenges the adequacy of the June 2010 VA medical opinion on two grounds. First, he asserts that the examiner "failed to sufficiently explain why the onset of [his] diagnosed hypertension was not in[]service when he first experienced documented high blood pressure readings." Appellant's Br. at 7. Second, he contends that the examiner "failed to consider all of [his] documented high blood pressure readings in service." *Id.* at 8. He specifically cites a service treatment record (STR) dated June 26, 1973, reflecting a blood pressure reading of 140/80. *Id.*

In its decision, the Board concluded that the June 2010 VA medical opinion was adequate, as "the examiner reviewed the [appellant's] past medical history, recorded his current complaints, conducted appropriate evaluations of the [appellant], and rendered an appropriate diagnosis and opinion consistent with the remainder of the evidence of record." R. at 5. The appellant has not persuaded the Court that the Board clearly erred in that determination. *See D'Aries v. Peake*, 22 Vet.App. 97, 104 (2008) (whether a medical opinion is adequate is a finding of fact, which the Court reviews under the "clearly erroneous" standard). The June 2010 examiner explained that, according to the appellant's STRs, he exhibited elevated blood pressure in 1972 while seeking treatment for an allergic reaction. R. at 527. He was referred to the hospital and underwent several tests, the last of which revealed no abnormalities. *Id.* The appellant was not prescribed any blood pressure medication and was discharged from the hospital with a final diagnosis of "Hypertension, by history, not found at present." *Id.*; see R. at 187-88. The examiner noted that the appellant was

diagnosed with hypertension in 2004² and first began taking antihypertensive medication at that time. R. at 529. The examiner opined that the appellant's elevated blood pressure in service in the 1970s was unrelated to the hypertension diagnosed 30 years later. *Id.*

To the extent that the appellant faults the examiner for failing to "sufficiently explain" why the elevated blood pressure readings in service were not related to his currently diagnosed hypertension, the Court is not persuaded. *See Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) ("An appellant bears the burden of persuasion on appeals to this Court."), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table). First, the Court notes that "there is no reasons or bases requirement on examiners." *Acevedo v. Shinseki*, 25 Vet.App. 286, 293 (2012). Second, the examiner conclusively determined that the appellant did not have a diagnosis of hypertension in service and was not diagnosed with hypertension until 30 years after service. R. at 527, 529. He supported his conclusion with a discussion of the appellant's medical history, explaining that the appellant's elevated blood pressure in 1972 occurred in the context of an allergic reaction and that, even after thorough testing, the STRs reflected no active diagnosis of hypertension and no need for medication. R. at 529; *see also Acevedo*, 25 Vet.App. at 294 (noting that medical reports "must be read as a whole" in determinations of adequacy). As discussed below, the Board, in turn, found that the appellant's hypertension did not manifest in service or within the one-year presumptive period following service, R. at 4, and the Court discerns no error in that finding, *see Hood v. Shinseki*, 23 Vet.App. 295, 299 (2009) ("The Court reviews factual findings under the 'clearly erroneous' standard.").

Similarly, although the appellant argues that the examiner failed to discuss favorable evidence, including an STR dated June 26, 1973, reflecting a blood pressure reading of 140/80, *see Appellant's Br.* at 8, "medical examiner[s] need not discuss all evidence favorable to an appellant's claim when rendering an opinion," *Roberson v. Shinseki*, 22 Vet.App. 358, 367 (2009). Moreover, although the VA examiner did not explicitly reference the June 26, 1973, STR, his opinion

² As noted by the Secretary, Secretary's Br. at 7, VA treatment records reflect a diagnosis of hypertension one year earlier, on January 31, 2003, R. at 142. However, the appellant makes no argument on this point, and the Court holds that the oversight is harmless error. *See Woehlaert v. Nicholson*, 21 Vet.App. 456, 463 (2007) ("This Court has consistently held that it will not address issues or arguments that counsel for the appellant fails to adequately develop in his or her opening brief."); *see also Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) (noting that "the burden of showing that an error is harmful normally falls upon the party attacking the agency's determination").

nonetheless acknowledged the appellant's "elevation of blood pressure in the 1970s" and explained that these readings never amounted to a diagnosis of hypertension. R. at 529. The Board reiterated and discussed these medical findings when it weighed the evidence of record and explained the bases for its determination that the appellant's hypertension did not manifest during service or within the presumptive period. R. at 4, 9-10.

In light of the foregoing, the Court holds that the Board's determination as to the adequacy of the June 2010 VA medical opinion was not the product of clear error and that the Board adequately explained that determination. *See Hood*, 23 Vet.App. at 299; *D'Aries*, 22 Vet.App. at 104; *see also* 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995) (holding that the Board's statement of reasons or bases for its decision "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").

B. Application of 38 C.F.R. § 3.303(b)

The appellant next argues that the Board failed to provide an adequate statement of reasons or bases to support its decision and "failed to consider the potential application of entitlement to service connection for hypertension on the basis of chronicity." Appellant's Br. at 10 (citing 38 C.F.R. § 3.303(b)).

Under § 3.303(b), "[w]ith chronic disease shown as such in service (or within the presumptive period under [38 C.F.R.] § 3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected" 38 C.F.R. § 3.303(b) (2016). The regulation then clarifies that, "[f]or the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings" *Id.*

In this case, the appellant's argument regarding the applicability of § 3.303(b) is premised on a diagnosis of hypertension—which qualifies as a chronic disease under 38 C.F.R. § 3.309(a)—either in service or during the applicable one-year presumptive period under § 3.307(a)(3). However, the Board explicitly determined that the appellant did not have a diagnosis of hypertension during service or for several years thereafter and that he was not diagnosed with hypertension until 2004. R. at 10. In light of this finding, the Board did not err when it determined

that there was no basis—presumptive or otherwise—for relating the 2004 diagnosis of hypertension to service. *See* R. at 10.

To the extent that the appellant cites three instances of high blood pressure readings documented in his STRs, *see* Appellant's Br. at 11, he has not identified any evidence from his period of active service that satisfies the requirements for a diagnosis of hypertension for VA disability benefits purposes, *see* 38 C.F.R. § 4.104, Diagnostic Code 7101, Note (1) ("Hypertension or isolated systolic hypertension must be confirmed by readings taken *two or more times* on at least three different days" (2016) (emphasis added)). Even assuming that the high blood pressure readings documented in the STRs triggered a duty to consider whether there was a continuity of symptomatology following discharge under § 3.303(b), the Board explicitly conducted this analysis and plausibly found no evidence of symptomatology until 30 years after service. R. at 10-11. Moreover, the Board specifically determined that the appellant's lay assertions of a continuity of symptomatology since service were not credible. R. at 11. Thus, the Court is not persuaded that the Board erred in its application of § 3.303(b) or that its statement of reasons or bases is otherwise inadequate. *See Hilkert*, 12 Vet.App. at 151; *Allday*, 7 Vet.App. at 527.

II. CONCLUSION

After consideration of the parties' briefs and a review of the record, that part of the Board's September 28, 2015, decision denying entitlement to service connection for hypertension is AFFIRMED. The appeal is otherwise DISMISSED.

DATED: November 30, 2016

Copies to:

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