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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 15-3603

LUCIOUS WRIGHT, 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, Lucious Wright, served in the U.S. Army from January 1966 to January 1968. Record (R.) at 1094. He appeals, through counsel, a July 27, 2015, Board of Veterans' Appeals (Board) decision that, in part, denied entitlement to service connection for low back and neck disabilities.¹ R. at 1-17. 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 July 27, 2015, decision that denied entitlement to service connection for low back and neck disabilities. In addition, as the appellant presents no argument concerning his service-connected headaches, 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).

In the decision on appeal, the Board found that the appellant has "current neck and low back disabilities" and accepted his contention that "there was an in-service jeep accident." R. at 11. Thus, the Board found that it must "address whether the evidence shows that the [appellant]'s

¹ The Board's grant of a 50% disability rating for his service-connected headaches is a favorable finding, which the Court cannot disturb. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007).

currently diagnosed disabilities are etiologically related to this in-service incident." *Id.* The Board determined, however, that the evidence does not establish a link between the appellant's current disabilities and service, relying primarily on a May 2014 VA compensation and pension (C&P) examination. R. at 12-13; *see* R. at 135-51. The Board concluded that the preponderance of the evidence shows that the appellant's current low back and neck disabilities are not etiologically related to his active duty service. R. at 13; *see* *Shedden v. Principi*, 381 F.3d 1163, 1166-67 (Fed. Cir. 2004) ("[I]n order to establish service connection . . . for a present disability the veteran must show: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service.").

The appellant argues that the Board clearly erred when it determined that the evidence weighed against a finding of a nexus between his in-service vehicle accident and his current low back and neck disabilities. Appellant's Brief (Br.) at 3-13. Specifically, he asserts that the Board clearly erred when it rejected several favorable private medical opinions or, in the alternative, that it failed to provide an adequate statement of reasons or bases as to why it afforded a May 2014 VA medical opinion more probative weight than the favorable private medical opinions. *Id.* at 5-13. He also argues that the private medical opinions placed the evidence in relative equipoise, warranting application of the benefit of the doubt rule. *Id.* at 11 (citing 38 C.F.R. § 3.102; *Gilbert v. Derwinski*, 1 Vet.App. 49, 55 (1990)). In response, the Secretary argues that the appellant failed to carry his burden of persuasion, as the Board plausibly determined that the favorable private medical opinions were based on inaccurate factual premises and lacked rationales. Secretary's Br. at 7-11. The Secretary also asserts that the Board provided an adequate statement of reasons or bases to support its determinations. *Id.*

The Board discussed private medical opinions from Dr. Ganti, the appellant's primary care physician, dated February 2008, June 2008, February 2010, May 2010, October 2011,² and June 2013, which link the appellant's neck and low back conditions to service. R. at 9-13. The Board also addressed private medical opinions from other physicians dated June 2012, July 2012, July

² The Board noted that Dr. Ganti's May 2010 and October 2011 statements merely repeated his February 2010 opinion. R. at 9.

2014, and February 2015. *Id.* The Board weighed these private medical opinions against the May 2014 C&P opinion and determined that the May 2014 C&P opinion held the greatest probative value, "as it was based on a review of the [appellant]'s claims file and supported by a complete rationale." R. at 12.

In doing so, the Board found that Dr. Ganti's February 2008, June 2008, and February 2010 opinions were not persuasive, as they were based on an inaccurate factual premise. *Id.* Specifically, Dr. Ganti based his positive nexus opinions on the appellant's years of military service and on multiple injuries, whereas during the May 2014 VA examination, the appellant was "adamant" that his back and neck conditions arose from a single injury in service: the jeep accident. *Compare* R. at 987, *with* R. at 142-43. The Board similarly found that the June 2012 private medical opinion was based on an inaccurate factual premise, namely, the appellant's "history of closed head trauma," a predicate otherwise unsupported by the record. R. at 12 (discussing R. at 256). The Board identified a similar deficiency in the June 2013 medical opinion, which reflected that the appellant did not report the vehicle accident to the authorities at the time of the incident, whereas he testified during his Board hearing that he had reported the accident to his mess sergeant, who told him to return to his duties. R. at 8, 12. Lastly, the Board found that none of the private medical examiners provided a rationale for their nexus opinions. R. at 12-13.

The appellant has not identified any favorable evidence that the Board failed to address. *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); *cf. Thompson v. Gober*, 14 Vet.App. 187, 188 (2000) (holding that the Board must provide an adequate statement of reasons or bases "for its rejection of any material evidence favorable to the claimant"). Indeed, the Board discussed each of the favorable private medical opinions. R. at 9-13. Rather, the appellant's arguments essentially amount to a disagreement with the Board's weighing of the evidence. *See Madden v. Gober*, 125 F.3d 1477, 1481 (Fed. Cir. 1997) (it is the "duty [of] the Board to analyze the credibility and probative value of evidence"); *Owens v. Brown*, 7 Vet.App. 429, 433 (1995) (it is the province of the Board to weigh and assess the evidence of record). The Court is not persuaded that the Board clearly erred in its weighing of the evidence. *See Wood v. Derwinski*, 1 Vet.App. 190, 193 (1991) (the Court reviews the Board's weighing of the evidence under the "clearly erroneous" standard) (*quoting Gilbert*, 1 Vet.App. at 52). Moreover, as the Board's decision

is understandable and facilitates judicial review, the Court holds that the Board provided an adequate statement of reasons or bases for its decision. *See* 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995).

As for the appellant's assertion that the Board improperly rejected his lay reports of experiencing low back and neck pain since his in-service accident, Appellant's Br. at 11, the Court is likewise not persuaded, *see Hilkert*, 12 Vet.App. at 151. The Board conceded the occurrence of the in-service accident and determined, with regard to the "nexus" requirement, that, although the appellant was competent to describe his low back and neck symptoms experienced since service, he was not shown to have the necessary medical expertise to opine on the etiology of his currently diagnosed degenerative joint disease of the cervical spine and degenerative disc disease of the cervical spine and lumbar spine. R. at 11 (*citing Davidson v. Shinseki*, 581 F.3d 1313 (Fed. Cir. 2009), and *Jandreau v. Nicholson*, 492 F.3d 1372 (Fed. Cir. 2007)). The Board further determined that, even accepting the appellant's lay statements, "the evidence does not show that [he] had continuous symptoms of neck problems since service," as "he only sought treatment for his neck symptoms every six months or twice a year, which tend to show that his symptoms were not persistent." R. at 13. Thus, contrary to the appellant's contentions, the Board specifically acknowledged his lay statements regarding his symptoms but found that they did not demonstrate continuity of symptomatology sufficient to warrant service connection. *See* 38 C.F.R. § 3.303(b) (2016).

To the extent that the appellant contends that he is entitled to the benefit of the doubt or that the evidence is in equipoise, Appellant's Br. at 11, his arguments are similarly not persuasive, *see Hilkert*, 12 Vet.App. at 151. The Board specifically determined that the preponderance of the evidence weighed against a finding that the appellant's low back and neck disabilities are related to service, R. at 13, and the appellant has not demonstrated that this determination was the product of clear error. *See Mariano v. Principi*, 17 Vet.App. 305, 313 (2003) (holding that the Court reviews the Board's determination as to whether the evidence is in equipoise under the "clearly erroneous" standard). Thus, as the Board determined, the benefit of the doubt doctrine was not for application. *See* 38 U.S.C. § 5107(b); *Gilbert*, 1 Vet.App. at 55-56 (holding that the benefit of the doubt doctrine is only applicable when the evidence is in equipoise).

Finally, to the extent that the appellant asserts that the Board relied on its own medical opinion in denying his claims, Appellant's Br. at 1, his argument is undeveloped, *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."); *Locklear v. Nicholson*, 20 Vet.App. 410, 416-17 (2006) (holding that the Court will not entertain underdeveloped arguments). The appellant's only elaboration on this argument is that the Board adopted its own medical opinion when it set aside Dr. Ganti's positive nexus opinions. Appellant's Br. at 8. However, the Board's analysis reflects that it weighed all of the medical opinions of record and favored the May 2014 C&P opinion over the opinions of Dr. Ganti. R. at 12. The Board was acting within its province as factfinder to weigh the medical evidence of record and, contrary to the appellant's assertion, the Board did not rely on its own medical judgment to do so. *See Washington v. Nicholson*, 19 Vet.App. 362, 367-68 (2005) (noting that it is the Board's duty, as factfinder, to assess the credibility and probative weight of all relevant evidence); *Owens*, 7 Vet.App. at 433. The Court is not persuaded of any Board error in this regard. *See Hilkert*, 12 Vet.App. at 151.

After consideration of the parties' briefs and a review of the record, that part of the Board's July 27, 2015, decision denying entitlement to service connection for low back and neck disabilities is AFFIRMED. The appeal is otherwise DISMISSED.

DATED: November 30, 2016

Copies to:

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