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

No. 15-2135

BENNIE RUIZ, 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, Bennie Ruiz, appeals through counsel an April 14, 2015, Board of Veterans' Appeals (Board) decision that denied him entitlement to benefits based on service connection for a lower back disability. Record (R.) at 1-24. The appellant argues that the Board erred (1) in failing to provide an adequate statement of reasons or bases for denying entitlement to service connection for his lower back disability; (2) by not fulfilling its duty to assist; and (3) by not providing an adequate statement of reasons or bases for its findings regarding the probative value of the medical evidence on the record. Appellant's Brief at 8-17. For the following reasons, the Court will vacate the Board's April 2015, decision and remand the matters 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 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 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 Vietnam veteran who served on active duty in the U.S. Marine Corps from October 1966 to March 1970 as a tractor operator. R. at 591 (DD Form 214). In April 1968, the appellant injured his back as a result of an in-service blast injury. R. at 1255, 1322. The appellant received a Purple Heart for his injuries. R. at 56. A medical report taken shortly after the injury stated that there was "tenderness over the posterior thoracic spines of T6-12." R. at 1322. In May 1968, the appellant was again injured, sustaining multiple shrapnel wounds and bilateral tympanic membrane perforations from a grenade explosion. R. at 1251-54.

In March 1970, the appellant filed for benefits for multiple injuries, including his back injury. R. at 1244-45. In May 1970, the appellant underwent a VA examination. R. at 1244-45. The VA examiner performed an x-ray on the appellant's back and determined that the results showed "no bone or joint abnormality nor opaque[ness]." R. at 1224. Despite the results of this x-ray, the appellant complained of back pain that was both "lumbo-dorsal and lumbo-sacral." R. at 1221. The appellant's claim for benefits was ultimately denied due because he failed to attend an additional VA examination. R. at 1208.

In May 1985, the appellant injured his back and was diagnosed with an acute lumbar strain. R. at 48. The examining physician stated that x-rays showed that the appellant had an old L-1 compression fracture that pre-dated the May 1985 injury. R. at 48. In April 2010, the appellant again filed for benefits for a back disorder. R. at 823. In June 2010, in conjunction with his claim, the appellant stated that he has had back pain since his active service. R. at 811. In September 2010, the appellant underwent a VA examination, where he reiterated that he has had back pain since his April 1968 injury. R. at 811. The examiner stated that the appellant had back pain and noted appellant's L-1 compression fracture. R. at 767. The examiner opined that the appellant's current back condition was less likely than not caused by or a result of the April 1968 injury. R. at 768. The examiner stated that without an x-ray from 1968, it was impossible to determine whether the

appellant's old L-1 compression fracture, first detected in 1985, was sustained in-service or sometime thereafter. R. at 768. Also in September 2010, the regional office (RO) denied the appellant service connection for a back disorder, stating that "although there is a record of treatment in service for a back condition in 1968, service connection for a back condition is denied as the medical evidence of record does not show that your in-service back strain is related to your current back condition." R. at 440.

The appellant appealed, submitting private medical records from October 2010 and November 2010. The appellant's physician in October 2010 stated that "it is probable that [the appellant's] old spinal injury from 1968 has evolved into a chronic pain syndrome." R. at 154. The appellant's November 2010 treatment record stated that "the traumatic injury [the appellant] suffered in April 1968 most likely caused the compression fractures of the thoracic and lumbar spine noted by the recent x-rays." R. at 422. In May 2011, the RO again denied the appellant's claim stating that there was no evidence to "show that [the appellant's] back condition began in or resulted from service." R. at 339. In June 2011, the appellant submitted a timely Notice of Disagreement (NOD). R. at 305. A June 212 MRI revealed that the appellant suffered from degenerative joint diseases of the lower thoracic and upper lumbar regions. R. at 160, 9.

In April 2013, the appellant underwent another VA examination. The examiner noted the appellant's old L-1 fracture, and reiterated that without an x-ray from 1968, it was impossible to know whether the L-1 fracture occurred in service or sometime thereafter. R. at 1287. In December 2013, the appellant testified before the Board that he has had problems with his back since his April 1968 injury. R. at 1387.

In April 2015, the Board issued a decision, denying the appellant service connection for his back disability, finding that the appellant's "current low back disability is not related to service." R. at 4. This appeal ensued.

For chronic diseases listed in 38 C.F.R. § 3.309(a), service connection may also be established by showing continuity of symptoms, which requires a claimant to demonstrate (1) that a condition was "noted" during service; (2) evidence of postservice continuity of the same symptoms; and (3) medical or, in certain circumstances, lay evidence of a nexus between the present disability and the postservice symptoms. 38 C.F.R. § 3.303(b) (2016); *see Walker v. Shinseki*, 708 F.3d 1331,

1340 (Fed. Cir. 2013) (only those chronic diseases listed in 38 C.F.R. § 3.309 are subject to service connection by continuity of symptoms described in 38 C.F.R. § 3.303(b)).

The Court concludes that the Board provided an inadequate statement of reasons or bases for denying the appellant service connection for his back disability on a theory of continuity of symptomatology. *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); *see also* 38 C.F.R. § 3.303(b) (requiring findings of service connection for a disability if a veteran is able to show a history of manifestations of this disability from the time of service through the time a claim of benefits is made). The Board was correct in finding that the appellant suffered from chronic arthritis. However, it ignored that the appellant is service connected for a chronic condition and has reported that his symptoms have continued since service. The Board therefore erred in failing to consider whether the appellant is entitled to service connection on a continuity-of-symptomatology theory. *See* 38 C.F.R. 3.303(b). Remand is required for the Board to provide an adequate statement of its reasons or bases regarding appellant's claim for entitlement to service connection for his back disability under a continuity-of-symptomatology theory.

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. *See* 38 U.S.C. § 7112; *see also Hayburn's Case*, 2 U.S. (2 Dall.) at 410, n., 1 L. Ed. 436 (1792) ("[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.").

For the foregoing reasons, and on review of the record, the Board's April 14, 2015, decision is VACATED and the matter is REMANDED for readjudication.

DATED: November 30, 2016

Copies to:

Barton F. Stichman, Esq.

VA General Counsel (027)