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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 15-4436

ELMER D. CATLIN, APPELLANT,

v.

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

Before KASOLD, *Judge*.

MEMORANDUM DECISION

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

KASOLD, *Judge*: Veteran Elmer D. Catlin appeals through counsel that part of an October 15, 2015, decision of the Board of Veterans' Appeals (Board) that determined a rating reduction for his right-shoulder disability was proper and denied a request for restoring the pre-reduction rating. Mr. Catlin argues that the Board (1) failed to explain how his continued painful motion and functional limitations reflected an improvement in his ability to function under the ordinary conditions of life, and (2) erroneously placed the burden on him to demonstrate that the reduction was not warranted. The Secretary disputes these arguments. Single-judge disposition is appropriate in this case. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons discussed below, the Board decision on appeal will be affirmed.

Mr. Catlin was assigned a 20% rating for his right-shoulder disability effective January 28, 2008, based in part on painful motion causing functional limitation, and his rating was reduced to 10% effective March 29, 2010, following surgery on his shoulder. In support of his first argument, Mr. Catlin cites *Brown v. Brown*, 5 Vet. App. 413, 420 (1993) for the proposition that a rating reduction can only take place upon an improvement in a rated disability *and* "the veteran's ability to function under the ordinary conditions of life and work." Opening Brief at 5-6 (quoting *Brown*, *supra*). At the outset, it is noted that *Brown* involved a rating that had been in effect more than 5

years and therefore any rating was subject to the specific requirement provided in 38 C.F.R. § 3.344. It was in the context of such a rating reduction – i.e., where a rating had been in effect for 5 years – that the Board noted the requirement that any such rating reduction had to consider the improvement in a veteran's ability to function under the ordinary conditions of life and work. Succinctly stated, it does not appear that *Brown* is specifically applicable to rating reductions where a rating has been in effect less than 5 years. *Cf.* 38 C.F.R. § 3.344(c) (2016) (noting that the requirement of subsections (a) and (b) apply to ratings that have continued for long periods, defined as 5 years or more). Indeed, § 3.344(c) specifically states that reduced ratings are warranted when examinations reflect improvement in physical or mental disabilities that have not become stabilized – i.e., ratings that have been assigned for less than 5 years.

Regardless, although the Board did not specifically state that Mr. Catlin had an improved ability to function under the ordinary conditions of life and work, there is no requirement that the Board use any specific terms when explaining its decision. Rather, read as a whole, the decision must be understandable and facilitative of judicial review. *See Janssen v. Principi*, 15 Vet.App. 370, 379 (2001) (rendering a decision on the Board's statement of reasons or bases "as a whole"); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995) (holding that the Board's statement "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").

Here, the Board acknowledged Mr. Catlin's continued pain and functional limitations, but further found, inter alia, that (1) his condition had significantly improved as a result of surgery, and (2) his medically recorded range of motion, although limited by pain, no longer supported a 20% disability rating. Mr. Catlin fails to demonstrate that these Board findings are clearly erroneous. *See Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (appellant bears burden of demonstrating error on appeal), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table). And, read as a whole, the Board's statement implicitly reflects a finding that Mr. Catlin's surgery resulted in an improved ability to function under the ordinary conditions of life and work, and the Board's statement in support of the rating reduction is understandable and facilitative of judicial review. *See Janssen and Allday*, both *supra*; *see also* 38 C.F.R. § 4.1 (2016) (explaining that the rating schedule represents the average impairment resulting from a disability).

In support of his second argument, Mr. Catlin notes that the Board found that he "did not meet the criteria associated with a rating in excess of 10 percent," Opening Brief at 7 (quoting Record at 8), and, again relying on *Brown, supra*, he contends that such a statement is inapposite to the standard for rating reductions and reflects the Board's shifting of the burden to him to demonstrate the reduction was not warranted. Similar to the above discussion, even if *Brown* applies to Mr. Catlin's case, he fails to demonstrate that the Board's finding that he did not meet the criteria for rating in excess of 10% amounts to a shifting of the burden to him to demonstrate a reduction was not warranted. *See Hilkert, supra*. Reading the Board's statement as a whole, the Board found that Mr. Catlin's condition had improved significantly such that he no longer merited a 20% rating. *See Janssen, supra*. As noted, above, Mr. Catlin fails to demonstrate error in that finding, and he otherwise fails to demonstrate that the Board shifted the burden to him to demonstrate a rating reduction was not warranted. *See Hilkert, supra*.

Upon consideration of the foregoing, that part of the October 15, 2015, Board decision on appeal is AFFIRMED.

DATED: November 30, 2016

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