



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

WASHINGTON, DC 20038

Date: November 8, 2019

SONJA GLOVER
PO BOX 1141
ORANGEBURG, SC 29116
USA

Dear Appellant:

The Board of Veterans' Appeals (Board) has made a decision in your appeal, and a copy is enclosed.

<i>If your decision contains a</i>	<i>What happens next</i>
Grant	The Department of Veterans Affairs (VA) will be contacting you regarding the next steps, which may include issuing payment. Please refer to VA Form 4597, which is attached to this decision, for additional options.
Remand	Additional development is needed. VA will be contacting you regarding the next steps.
Denial or Dismissal	Please refer to VA Form 4597, which is attached to this decision, for your options.

If you have any questions, please contact your representative, if you have one, or check the status of your appeal at <http://www.vets.gov>.

Sincerely yours,

K. Osborne
Deputy Vice Chairman

Enclosures (1)
CC: Disabled American Veterans



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
SONJA GLOVER

Represented by
Disabled American Veterans

██████████
Docket No. 16-24 185

DATE: November 8, 2019

REMANDED

The propriety of the severance of service connection for bilateral pes planus is remanded.

REASONS FOR REMAND

The Veteran had active service in the U.S. Navy from April 1990 to March 1994.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a January 2016 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in Saint Paul, Minnesota, which severed entitlement to service connection for bilateral pes planus effective April 1, 2016. The Veteran submitted a notice of disagreement in February 2016. A statement of the case was issued in April 2016. The Veteran perfected a timely substantive appeal via VA Form 9 in May 2016.

The Board previously remanded this matter in October 2018.

The propriety of the severance of service connection for bilateral pes planus is remanded.

The Board finds that remand is needed for a new VA opinion.

The Board previously remanded this matter in October 2018 to obtain an addendum VA opinion regarding aggravation of the pre-existing flat foot symptoms and treatment during service.

Upon remand, a VA opinion was obtained in July 2019. The examiner opined that the Veteran's "pre-existing bilateral pes planus less likely as not (less than 50 percent) probability) underwent an increase in severity (non-temporary) as the result of service." This opinion substantially complied with the Board's remand directives.

However, upon further review, the opinion is not sufficient to decide the issue. As service connection has been severed, the question is not whether the Veteran's pes planus at least as likely as not underwent an increase in severity during service. Rather, the question is whether it is clear and unmistakable that the condition did not undergo an increase in severity during service. *See* 38 C.F.R. § 3.105(d); *Stallworth v. Nicholson*, 20 Vet. App. 482, 488 (2006).

Unfortunately, the July 2019 VA examiner's opinion is not clear and unmistakable evidence on this question because the examiner gave the ultimate opinion in a degree of certainty less than clear and unmistakable. *See Cotant v. Principi*, 17 Vet. App. 116, 131 (2003) (the clear and unmistakable standard is "very demanding" and requires unconditional (uncontradicted) evidence, which is not satisfied by an equivocal medical opinion using such conditional qualifications as ("most likely" and "not significantly aggravated")) (citing *Harris, v. West*, 11 Vet. App. 456, 462 (1998)).

As such, remand for a new opinion is needed.

The matters are REMANDED for the following action:

Obtain an opinion from an appropriate clinician regarding the Veteran's pes planus.

The examiner is asked to address the following:

(a.) Is it clear and unmistakable that the Veteran's pre-existing bilateral pes planus did NOT worsen

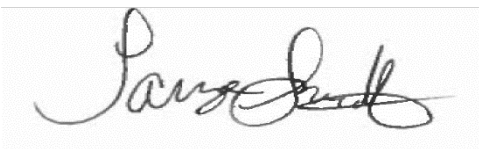
(undergo an increase in severity (non-temporary))
during service?

(b.) If examiner determines that the disease
underwent ANY degree of worsening during
service, is it clear and unmistakable that the
worsening was due to its natural progress?

In answering these questions, the examiner should
understand the phrase “clear and unmistakable” to
mean that the finding is undebatable such that no
equally qualified medical professional with the
same information could reasonably reach a
different conclusion.

The examiner should address the Veteran’s
contention that her pre-existing bilateral pes planus
was aggravated during service due to extensive
walking, running, and marching during OCS which
caused inflammation, severe pain, peeling skin,
and loss of toe nails. The examiner is asked to
explain why her statements do or do not support a
finding that there was a worsening during service.
If indicated, it should be explained whether there is
a ****medical**** reason to believe that the Veteran’s
recollection of her symptoms during and after
service may be inaccurate or not medically
supported as the onset or cause of her current
diagnosis.

(continued on next page)



TANYA SMITH
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

C. Bosely, Counsel

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential, and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.