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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-7151

BRIAN W. CALMON, APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before TOTH, *Judge*.

MEMORANDUM DECISION

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

TOTH, *Judge*: Brian W. Calmon served in the U.S. Marine Corps from 1977 to 1981. He represents himself before the Court and appeals a July 2019 Board decision that denied service connection for sleep apnea and hypertension.¹ He argues that the Board relied on inadequate VA examinations, specifically two that addressed service connection for hypertension and a third that addressed sleep apnea. The Secretary concedes that the examinations were inadequate. Having reviewed the record, the Court accepts the Secretary's concessions of error and vacates the Board's decision.

Per the Secretary, the VA opinions as to hypertension were conclusory and lacked sufficient rationale. To be adequate, an examiner's report must contain the "essential rationale" for the opinion. *Monzingo v. Shinseki*, 26 Vet.App. 97, 105 (2012). The matter-of-fact nature of the opinions here offered little, if any, insight as to how the examiner arrived at his conclusions. The Board clearly erred by relying on the opinions. *See Sharp v. Shulkin*, 29 Vet.App. 26, 31 (2017).

As to sleep apnea, the Secretary concedes that neither the examiner nor the Board discussed the possibility that Mr. Calmon's sleep apnea may be aggravated by his service-connected deviated septum. Two private examiners expressly suggested that this was likely. "A claimant is entitled to

¹ The Court does not disturb the Board's favorable findings as to hearing loss and deviated septum residuals.

secondary service connection if a disability is . . . aggravated by a service-connected disease or injury." *Atencio v. O'Rourke*, 30 Vet.App. 74, 90 (2018). And "aggravation of a condition by a service-connected disability is independent of direct causation." *Id.* at 91. The "Board must ensure that medical examinations are adequate on that question and explain the bases for its conclusion concerning aggravation." *Id.* Its failure to do so here was error.

Accordingly, the Court VACATES the July 9, 2019, Board decision as to sleep apnea and hypertension and REMANDS the matters for further proceedings consistent with this decision.

DATED: May 12, 2020

Copies to:

Brian W. Calmon

VA General Counsel (027)