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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 17-1519

LENARD W. GRAHAM, APPELLANT,

v.

PETER O'ROURKE,
ACTING SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before ALLEN, MEREDITH, and TOTH, *Judges*.

ORDER

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

On May 22, 2017, appellant Lenard W. Graham appealed through counsel a March 1, 2017, Board of Veterans' Appeals (Board) decision that dismissed his appeal for an initial compensable rating for scars of the left eyebrow and inner upper lip.¹ The appeal was submitted to a panel of the Court for decision and oral argument was scheduled. Then, on June 11, 2018, the parties filed a joint motion for partial remand (JMPR).

In the JMPR, the parties seek to vacate the portion of the Board's decision that dismissed appellant's appeal of his left eyebrow and inner upper lip scars. They now "agree that the Board's explanation as to whether [the] appellant withdrew his appeal at his September 2016 Board hearing was incomplete and required a more detailed analysis." JMPR at 3.

Finally, as part of their JMPR, the parties have affirmatively waived any right to appeal this matter. Accordingly, pursuant to Rule 41(b) of the Court's Rules of Practice and Procedure, this order will serve as the mandate of the Court, and any application pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), for an award of attorneys' fees and expenses must be submitted no later than 30 days from the date of this order. *Cf. Bly v. Shulkin*, 883 F.3d 1374 (Fed. Cir. 2018).

¹ The Board also granted a total disability rating based on individual unemployability, a favorable finding that the Court may not disturb. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007). It also remanded the issues of entitlement to an initial rating in excess of 20% for left shoulder and acromioclavicular joint degenerative changes; an initial rating in excess of 20% for cervical spine degenerative changes; an initial compensable rating prior to December 10, 2012, and a rating in excess of 30% since that date for left upper extremity radiculopathy; an effective date earlier than March 17, 2009, for the grant of service connection for left upper extremity radiculopathy; a rating in excess of 20% for left knee degenerative joint disease (DJD) with instability; an initial rating in excess of 10% for left knee DJD with limitation of extension; and a compensable rating for bilateral hearing loss. Accordingly, these issues are not before the Court. *See Breeden v. Principi*, 17 Vet.App. 475, 478 (2004) (per curiam order).

Upon consideration of the foregoing, it is

ORDERED that the Court's May 4, 2018, order scheduling oral argument for July 10, 2018, is revoked. It is further

ORDERED that the parties' JMPR is GRANTED and that, pursuant to Rule 41(b), this order is the mandate of the Court.

DATED: June 20, 2018

PER CURIAM.

Copies to:

Evan T. Snipes, Esq.

VA General Counsel (027)