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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 17-0477

ROSETTA MCKNIGHT, APPELLANT,

v.

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

Before DAVIS, *Chief Judge*, and MEREDITH and TOTH, *Judges*.

ORDER

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

The appellant, Rosetta McKnight, appealed a November 14, 2016, Board decision that denied the following: (1) a rating higher than 70% for PTSD; (2) an effective date earlier than January 21, 2009, for the award of service connection and a 70% rating for PTSD; and (3) an effective date earlier than January 21, 2009, for the award of a total disability rating based on individual unemployability (TDIU). The Court ordered that the appeal be submitted to a panel for decision.

On August 17, 2018, the parties submitted two motions. The first is a joint motion to terminate the appeal as to issues (1) and (2). The stipulated agreement accompanying this motion states that the Secretary will assign an effective date of January 22, 2008, for the award of service connection and a 70% rating for PTSD. Both parties agree that this action will fully resolve issues (1) and (2) and that the Court should dismiss with prejudice the appeal with respect to these issues.

The second motion is a joint motion for partial remand as to issue (3) on the basis that TDIU is inextricably intertwined with the issue of entitlement to an earlier effective date for the award of PTSD benefits. Both parties also affirmatively waive their rights to appeal this matter and request that the Court enter mandate upon granting the motion.

The Court grants both motions. Based on the parties' waiver, under Rule 41(b) of the Court's Rules of Practice and Procedure, this order will serve as the mandate of the Court. *Cf. Bly v. Shulkin*, 883 F.3d 1374, 1377 (Fed. Cir. 2018).

Upon consideration of the foregoing, it is

ORDERED that the joint motion to terminate the appeal as to issues (1) and (2) is GRANTED, and the appeal with respect to these issues is DISMISSED with prejudice in accordance with the parties' stipulated agreement. It is further

ORDERED that the joint motion for partial remand as to issue (3) is GRANTED, the portion of the November 14, 2016, Board decision regarding TDIU is VACATED, and that matter is REMANDED for additional proceedings in accordance with the terms of the parties' joint motion for partial remand. It is further

ORDERED that, under Rule 41(b) of the Court's Rules of Practice and Procedure, this order is the mandate of the Court.

DATED: August 28, 2018

PER CURIAM.

Copies to:

Kenneth H. Dojaquez, Esq.

VA General Counsel (027)