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**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

No. 18-0437

TRAVIS MAY, APPELLANT,

v.

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

Before ALLEN, *Judge*.

**MEMORANDUM DECISION**

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

ALLEN, *Judge*: U.S. Air Force veteran Travis May appeals an October 10, 2017, Board of Veterans' Appeals decision denying service connection for a right knee, lumbar spine, and bilateral hip disabilities.<sup>1</sup> There are two issues in this appeal, which was timely filed and over which the Court has jurisdiction.<sup>2</sup> The first question is whether the Board provided inadequate reasons or bases for denying service connection for the veteran's right knee disability. Both parties agree remand is warranted on this issue. Because the Board relied on an incorrect reading of an October 2014 VA medical report, the Court agrees and remands the matter of the veteran's right knee disability. The next question is whether the Board erred in denying service connection for a lumbar

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<sup>1</sup> The Board also granted entitlement to an effective date of March 6, 2012, for service connection for PTSD, an initial 10% disability rating each for right and left shin splints. These are favorable findings the Court can't disturb. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007). Next, the Board remanded claims for service connection for erectile dysfunction, a higher initial rating for PTSD, a higher initial rating for left knee strain with laxity, a higher initial rating for left knee strain with limitation of motion, and a higher initial rating for right shoulder tendonitis. These remanded matters are not before the Court. *See Breeden v. Principi*, 17 Vet.App. 475, 478 (2004) (per curiam order). Finally, the veteran makes no argument about the Board's denial of (1) an effective date before March 6, 2012, for its grant of service connection for PTSD, left knee strain with laxity, and left knee strain with limitation of flexion; (2) an effective date before June 18, 2014, for the grant of service connection for right and left shin splints; and (3) an initial rating of 10% each for right and left shin splints. The Court deems an appeal as to these issues abandoned. *See Pederson v. McDonald*, 27 Vet.App. 276, 285 (2015) (en banc).

<sup>2</sup> *See* 38 U.S.C. §§ 7252(a), 7266(a).

spine and bilateral hip disabilities. Because the veteran's arguments on this issue are undeveloped, the Court affirms those denials.

## **I. ANALYSIS**

### **A. Right Knee Disability**

The first issue in this appeal is easily dispensed with. The veteran argues the Board provided inadequate reasons or bases for denying service connection for a right knee disability. The Secretary concedes remand is warranted on this point, and the Court agrees. In denying the veteran's claim, the Board incorrectly stated that an October 2014 VA medical report "revealed no findings relating to the right knee and no diagnosis of a right knee disability."<sup>3</sup> Yet the examiner noted functional loss and functional impairment of both knees with less movement than normal and pain on movement.<sup>4</sup> Thus, the Board's reasons or bases for denying service connection for a right knee disability were inadequate and remand is warranted for this portion of the Board's decision.<sup>5</sup>

In pursuing his case on remand, the veteran is free to submit additional evidence and argument, including the arguments raised in his briefs to this Court.<sup>6</sup> The Board must consider any such evidence or argument.<sup>7</sup> The Court reminds the Board that "[a] remand is meant to entail a critical examination of the justification for the decision."<sup>8</sup> The Board must proceed expeditiously.<sup>9</sup>

### **B. Lumbar Spine and Bilateral Hip Disabilities**

Next, the veteran argues the Board erred when it relied on October 2014 bilateral hip and lumbar spine medical opinions he contends are inadequate. In his view, the opinions are "incomplete and failed to consider alternate theories of recovery reasonably raised by the record, including secondary causation and/or aggravation by" the veteran's right knee disability, which

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<sup>3</sup> Record (R.) at 14.

<sup>4</sup> R. at 1710.

<sup>5</sup> See *Tucker v. West*, 11 Vet.App. 369, 374 (1998).

<sup>6</sup> *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order); see *Clark v. O'Rourke*, 30 Vet.App. 92, 97 (2018).

<sup>7</sup> *Kay v. Principi*, 16 Vet.App. 529, 534 (2002).

<sup>8</sup> *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991).

<sup>9</sup> 38 U.S.C. §§ 5109B, 7112.

wasn't service connected at the time of the examination.<sup>10</sup> He also argues they lacked supporting rationale for concluding his service-connected left knee disability didn't aggravate either disability. The Court disagrees.

Medical opinions are adequate when "based upon consideration of the veteran's prior medical history and examinations and also describes the disability in sufficient detail" so that the Board's "evaluation of the claimed disability will be a fully informed one."<sup>11</sup> For them to have any probative value, they must be "factually accurate, fully articulated," and provide "sound reasoning for the conclusion[.]"<sup>12</sup> Board determinations about the adequacy of medical opinions are reviewed for clear error.<sup>13</sup> Clear error exists "when although there is evidence to support [a finding], the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."<sup>14</sup> And finally, as always, the Board must support all its material factual determinations and legal conclusions with a written statement of reasons or bases that is "adequate to enable a claimant to understand the precise basis for the Board's decision, as well as to facilitate review in this Court."<sup>15</sup>

Regarding the veteran's bilateral hip disabilities, the October 2014 VA examiner clearly stated that there was "no evidence of aggravation," explaining that the veteran's hip x-rays were "normal without degenerative findings suggestive of increase stress on the joints."<sup>16</sup> He also noted that "[t]he veteran walks with a steady gait without a limp and therefore [there's] no evidence that the left knee condition would have caused increased stress on the hips causing a condition."<sup>17</sup> It's unclear what basis the veteran has for arguing the examiner "offered no rationale for his conclusion" when the examiner clearly did so. He may disagree with that rationale, but mere disagreement falls short of showing clear error.<sup>18</sup>

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<sup>10</sup> Appellant Brief (Br.) at 6-10.

<sup>11</sup> *Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007) (emphasis added); see *Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008).

<sup>12</sup> *Nieves-Rodriguez*, 22 Vet.App. at 304.

<sup>13</sup> *D'Aries v. Peake*, 22 Vet.App. 97, 104 (2008); see *Gilbert v. Derwinski*, 1 Vet.App. 49, 52 (1990).

<sup>14</sup> *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).

<sup>15</sup> *Allday v. Brown*, 7 Vet.App. 517, 527 (1995).

<sup>16</sup> R. at 1716.

<sup>17</sup> *Id.*

<sup>18</sup> See *U.S. Gypsum Co.*, 333 U.S. at 395.

The veteran's arguments about the Board's denial of service connection for a lumbar spine disability are equally unavailing (and appear to be a carbon copy of his arguments about the Board's denial for the bilateral hip condition). He argues the examiner "offered no rationale for his negative, conclusory aggravation opinion" and "did not consider" the possibility that the veteran's right or left knee disabilities caused or aggravated the lumbar spine condition.<sup>19</sup> These arguments are undeveloped.<sup>20</sup> After listing them, the veteran spends the rest of his brief merely repeating the same conclusory argument stated different ways without any attempt at coherent reasoning.<sup>21</sup> Thus, the Court need not and will not address them.<sup>22</sup> The remainder of the Board's decision is affirmed.

## II. CONCLUSION

The portion of the Board's October 10, 2017, decision denying service connection for a right knee disability is SET ASIDE and the matter REMANDED. The remainder of the decision is AFFIRMED.

DATED: February 13, 2019

Copies to:

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<sup>19</sup> Appellant's Br. at 9.

<sup>20</sup> See *Locklear v. Nicholson*, 20 Vet.App. 410, 416-17 (2006); see also *United States v. Berkowitz*, 927 F.2d 1376, 1384 (7th Cir. 1991) ("We repeatedly have made clear that perfunctory and undeveloped arguments . . . are waived.").

<sup>21</sup> See Appellant's Br. at 9-10.

<sup>22</sup> See *Locklear*, 20 Vet.App. at 416-17.