

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 17-2773

ROBERT L. MARTIN, APPELLANT,

v.

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

Before DAVIS, *Chief Judge*, BARTLEY, and FALVEY, *Judges*.

ORDER

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

On August 23, 2017, Air Force veteran Robert L. Martin, appealed through counsel the portion of a July 13, 2017, Board of Veterans' Appeals decision denying service connection for hypertension, including due to herbicide exposure or as secondary to service-connected diabetes or coronary artery disease. Mr. Martin argues that the biennial National Academy of Sciences' *Veterans and Agent Orange: Update* (NAS Agent Orange Update) was constructively before the Board because the Secretary acknowledged the NAS Agent Orange Update's findings on hypertension in the Federal Register. He asserts that the Board thus erred by relying on an October 2015 VA examination because the examiner opined that current medical literature does not link the development or aggravation of hypertension to any specific Agent Orange exposure. The veteran contends that this rationale conflicts with the NAS Agent Orange Update that has noted "limited or suggestive evidence" of an association between hypertension and herbicide exposure.

On November 16, 2018, Mr. Martin filed an opposed motion for oral argument to which the Secretary did not respond. On December 6, 2018, the Court granted the motion and issued an order directing the parties to be prepared to discuss specific matters at oral argument. On December 13, 2018, Mr. Martin filed a motion seeking leave to file a written response addressing the questions set out in the Court's December order. On January 3, 2019, the Court granted the motion and ordered the parties to file supplemental memoranda of law. On January 18, 2019, the Court ordered that oral argument be held on March 20, 2019. On January 23, 2019, Mr. Martin filed his supplemental memorandum of law and on February 12, 2019, he submitted an excerpt from *The Purplebook*, Version 1.0.2., Board of Veterans' Appeals (Sept. 2018), which is an internal Board manual that provides guidance and policy on adjudicating claims. The same day, the Secretary filed an unopposed motion asking that the proceedings be stayed because the parties were negotiating a joint resolution. On February 13, 2019, the Court granted the Secretary's request and stayed the matter until February 22, 2019.

On February 19, 2019, the parties filed a joint motion for partial remand (JMPR). The JMPR reflects the parties' request that the Court vacate the part of the July 13, 2017, Board decision that denied service connection for hypertension, including as due to herbicide exposure and as secondary to service-connected diabetes mellitus, type II, or coronary artery disease. JMPR at 1. The JMPR further states that the "parties agree to unequivocally waive any right to appeal the Court's order on this JMPR and respectfully ask that the Court enter mandate upon the granting of this motion." *Id.* at 3; *see Bly v. Shulkin*, 883 F.3d 1374 (Fed. Cir. 2018)).

Upon consideration of the foregoing, it is

ORDERED that the Court's February 13, 2019, order staying proceedings is lifted. It is further

ORDERED that the February 19, 2019, joint motion for partial remand is granted. It is further

ORDERED that the Court's January 18, 2019, order setting oral argument in this matter is revoked as moot. It is further

ORDERED that the portion of the July 13, 2017, Board decision denying service connection for hypertension, including as due to herbicide exposure and as secondary to service-connected diabetes mellitus, type II, or coronary artery disease is VACATED and the matter is REMANDED for additional proceedings in accordance with the terms of the parties' joint motion for partial remand. It is further

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

DATED: February 22, 2019

PER CURIAM.

Copies to:

Zachary M. Stolz, Esq.

VA General Counsel (027)