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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

625 Indiana Avenue, NW Suite 900  
Washington, DC 20004-2950

APPELLANT'S INFORMAL BRIEF

Docket No: 18-7419

Benjamin J. Seltzer, IV,

Appellant,

v.

Robert L. Wilkie,  
Secretary of Veterans Affairs,

Appellee.

*Type or legibly write your answers to each question. If the Court cannot read your handwriting, your brief may be returned to you.*

1. If there is more than one issue listed on the first page of the Board decision, which issue(s) are you appealing?

*Please note that if you choose not to list an issue here, the Court might not review that issue.*

- Service connection for low back disability
- Service Connection for bilateral Knee disability
- Entitlement to an evaluation in excess of 30 percent for Plantar fasciitis with degenerative arthritis of both feet

*Questions 2-6 ask you for information regarding the issues you believe were incorrectly decided by the Board.*

2. For each issue you listed in Question 1, did the Board incorrectly state any facts?

Yes ☒ No ☐

*If yes, what are the correct facts? Please list the page number(s) from the Record Before the Agency (RBA) that support your argument.*

- Service connection for low back disability (Please See attached sheets)
- Service connection for bilateral Knee disability (Please See attached sheets)
- Entitlement to an evaluation in excess of 30 percent for Plantar fasciitis with degenerative arthritis of both feet (Please see attached sheets)

3. Are there any documents in the Record Before the Agency (RBA) that support your claim(s)?

Yes ☒ No ☐

If yes, what are those documents? *Please list the page number(s) in the RBA where they can be found and explain why you think they support your claim.*

Please see attached sheets

4. Did VA fail to obtain any documents identified by you or your representative or mentioned in the Record Before the Agency (RBA) when it was gathering evidence for your case?

Yes ☒ No ☐

If yes, list the page number(s) of the RBA that show that these documents exist and explain:

- How each document relates to your claim(s)
- Why each document is important to your case

***The Court cannot consider documents that were not before the Board. Also, please do not attach any pages from the RBA.***

Please see attached sheets

5. To your knowledge, did the Board fail to apply or misapply any law, case, or regulation?

Yes ☐ No ☐

If yes, what is that law, case, or regulation and how should the Board have applied it?

Please see attached sheets.

6. Do you think that the Board decision is wrong for any other reason(s)?

Yes \_\_\_\_ No \_\_\_\_

If yes, what are those reason(s)? Please list the page number(s) from the RBA that support your argument.

Please see attached sheets

Finally, Questions 7-8 ask you for information that will help the Court process your case.

7. What action do you want this Court to take?

Please see attached sheets

8. If you needed extra pages to answer the questions above, how many extra pages did you attach to this form? 11

**Please remember that your brief cannot exceed 30 pages total (including this form). Do not attach any pages from the RBA.**

**On any attached pages, make sure to include your name and your Court docket number.**

Please sign and date this form after you have finished completing it.

Appellant's Telephone Number: (619) 981-8293

Appellant's Address: 3882 Shirlene Place, La Mesa, CA 91941-7430

Appellant's Signature:

Benjamin J. Seltzer IV

Date: 5/15/2019

**APPELLANT'S INFORMAL BRIEF (CONTINUED)**

Benjamin J. Seltzer IV

Docket No: 18-7419

**Question 2:** Continued:

Regarding my requested entitlements to three denied service connected disabilities consisting of low back; bilateral knee; and an evaluation in excess of 30 percent for plantar fasciitis with degenerative arthritis of both feet, it must be understood that I cannot fully support my Claim without the inclusion of supporting evidence addressed in my Pending Notice of Disagreement (NOD) dated May 25, 2018.

My pending Appeal (partly, addresses deep rooted bilateral characteristic callosities) has been ongoing since 2015 and is considered a nexus between my in-service and present day denied disabilities. This nexus etiologically supports my Claim and is subject to the benefit-of-the-doubt-rule.

On June 5, 2017, I attended a Board of Veteran's Appeals (Board) Central Office Hearing, Washington, DC, and met with a Veterans Law Judge. During this visit, I informed the Judge (prior to the start of the Transcript Hearing, unrecorded), that my pending Notice Of Disagreement (NOD) was related to this Appeal, and in response, I was told that I could not discuss this matter on this day of Hearing.

Record Before the Agency (RBA), Page 4: States "The Board acknowledges that the Veteran has filed a Notice of Disagreement on the issues of entitlement to higher evaluation for.....," "characteristic callosities of the right foot, and characteristic callosities of the left foot. While it would be appropriate to remand the higher evaluation claim and service connection claims for issuance of a statement of the case under *Manlincon v. West*, 12 Vet. App. 238 (1999), a review of the record reveals that the AOJ is still taking action on these issues."

For the Court's information, the Agency of Original Jurisdiction, to date, has not acted upon my pending NOD. Service Treatment Records (STRs), along with additional probative medical evidence fully support this Veteran's pending Claim.

Additionally, the disallowing of this important and supporting evidence (nexus) at this time strongly prevents the Veteran's ability to adequately provide proof and respond reasonably to the VA's inquiries.

**Question #2:** Continued: Incorrectly stated:

Low Back: Record Before the Agency (RBA), Page 7: States: ..... "Moreover, the VA treating physician failed to explain how the Veteran's in-service duties specifically impacted his back causing sufficient injury to result in him developing his current low back disability. Considering that the September 2014 VA treating physician's opinion was based on no rationale, the opinion is deemed conclusory, and thus, it provides little probative value."

Fact: RBA, Page 5, (Service Connection): States: ....., "while serving aboard a naval ship, he had to carry heavy boxes of paper and other supplies up and down the ladders of six decks, to move and relocate office equipment and supplies, and to lift and maneuver cleaning equipment during inspections. The Veteran also reported being assigned to working parties in which he had to carry loads of the ship's supplies during replenishments. During operational exercises, the Veteran assisted with lifting and handling firefighting equipment.

As part of his service, the veteran also noted that he had to endure physically rigorous activities, including running and exercising on metal or steel decks, to maintain his weight and health. Overall, the Veteran asserts that his back and knees deteriorated due to the wear and tear on his body caused by his duties during service."

\*For the Court's information, STRs confirm that this Veteran is service-connected for a Hernia.

\*The pending NOD (nexus) criteria cannot be addressed regarding my Low Back disability.

**Question #2:** Continued: Bilateral Knee Disability:

Incorrectly stated: RBA, Page 9, states: "The evidence shows that the Veteran has a current diagnosis for bilateral knee osteoarthritis."

Page 9 further states: "With regard to the Veteran's right knee disability, the July 2015 VA examiner, who clarifying his March 2015 VA opinions, found that upon separation, the veteran had normal knees and no complaints of knee pain. In 2008, there was radiographic evidence of minimal spurring of the right knee, which was almost 10 years after his separation."

Page 10 states: "With regard to the veteran's left knee disability, the July 2015 VA examiner opined that his left knee disability was less likely than not related to his active duty service. In making that determination, the July 2015 VA examiner noted that the Veteran's STR's documented a left knee strain, which occurred in June 1985 after jogging and playing basketball. He was diagnosed with a patella ligament strain or tendonitis."

The narrative further states "The Veteran's degenerative changes were not identified until 2014, about 15 years after his discharge. Prior X-rays were negative for degenerative changes. Overall, the July 2015 VA examiner found no evidence supporting a link between the Veteran's current left knee disability and his isolated diagnosis for left knee strain during service; nor was there a relationship found between his degenerative arthritis and his active duty service."

Fact: Transcript of Hearing, Page 3 (Knees): States "That's the thing Judge, I'm the type, I don't complain a lot, so to give an exact date as to when and how - - sick hall is something that we went to, it had to be really somewhat extreme to go there. So there's a lot of ailments that I've had, and may have had that I just didn't go get documented or I just didn't even report. To me it was just a part of a feeling that I had and I just dealt with. So that's how I answered that. There's just a lot of things, I didn't even know I that I should have gotten things documented back - - well, my whole service I didn't know I needed to get things documented, so that's the situation with that."

Fact: In reference to RBA, Page 9: It should be noted that the VA reports the Veteran's current diagnosis for bilateral knee is osteoarthritis but fails to include that the diagnosis was conducted through an MRI (without contrast), on August 8, 2014. This MRI diagnosed the veteran's bilateral knee condition with more issues than just osteoarthritis.

The "correct" current diagnosis for the Veteran's bilateral knee disability (in addition to osteoarthritis) is as follows:

Left Knee: Nationwide MRI (08/18/2014): There is scarring of the infrapatellar Hoffa's fat pad; there is a small-to-moderate-sized joint effusion; there is a horizontal oblique tear at the posterior horn-body junction of the medial meniscus; there are mild tricompartmental osteoarthritic changes; there is mild chondromalacia of the patella; and there is a mild lateral patellar tilt.

Right Knee: Nationwide MRI (08/18/2014): There is scarring of the Infrapatellar Hoffa's fat pad; there is a small joint effusion; there is a horizontal tear of the posterior horn and body of the medial meniscus; there are mild femorotibial osteoarthritic changes; and there is mild chondromalacia of the patella.

Fact: X-ray is not a very detailed exam, rather used to see bones, whereas the MRI is good at showing soft tissue between normal and abnormal. Majority of radiographs performed on me throughout my Naval career have been X-rays. The Nationwide 2014 MRI's listed above were paid out of pocket by this Veteran due to the rigors of acquiring MRI's through the Veteran's Affairs (VA) and military hospitals and clinics.



Further, these MRI's were done without contrast, and are referred to as a "standard" MRI scan.

Contrast-enhanced MRI's involve an injection of contrast to increase image sensitivity. An MRI with contrast is more clear and designed to highlight certain parts of the soft tissue which better helps Radiologist to diagnoses the condition.

**Question #2:** Continued: An Evaluation in exces of 30 percent for plantar fasciitis with degenerative arthritis of both feet:

Incorrectly stated: RBA, Page 13: States: "Based on a careful review of all the subjective and clinical evidence, the Board finds that throughout the relevant appeal period the veteran's plantar fasciitis with degenerative changes of both feet does not warrant a higher 50 percent evaluation under diagnostic Code 5276. On that basis, the most probative evidence is reflected by the clinical findings of the December 2013, September 2014 and October 2014 examinations."

The RBA further states "His pain did not contribute to functional loss, as mild tenderness to palpation over plantar fascia was noted, but no swelling or spasm was found. There was no characteristic callouses or extreme tenderness of the plantar surface. No alignments or deformity problems were identified. An MRI of both feet revealed no evidence of plantar fascia rupture or edema.

Throughout the relevant appeal period, the board finds that the evidence does not demonstrate that the Veteran's plantar fasciitis with degenerative arthritis on both feet more closely approximates pronounced symptoms with marked probation, extreme tenderness of plantar surfaces of the feet, marking inward displacement and severe spasm of the tendo achilles on manipulation, that is not improved by orthopedic shoes or appliances."

Fact and Supporting probative evidence: Contrary to the VA's clinical evidence, "deep rooted" characteristic callosities were prominent and relevant on this Veteran's feet throughout this appeal period. The Veteran's pending Notice of Disagreement (Nexus) confirms this disability and provides further details concerning this matter.

3: Documents in the Record Before the Agency (RBA) that support my claim:

RBA, Page 13: States:...."On that basis, the most probative evidence is reflected by the clinical findings of the December 2013, September 2014 and October 2014 VA examination.'

Supporting document: Nationwide MRI (Right Ankle without contrast) dated September 27, 2014, (evidential criteria for entitlement to an evaluation in excess of 30 percent). The diagnosis reads as follows:

There is tendinosis of the insertional segment of the Achilles tendon. There is a Haglund bump involving the posterior aspect of the calcaneus. There is evidence of a partial-thickness undersurface tear of the insertional segment of the Achilles tendon.

There is soft tissue edema involving the calcaneal fat pad. There are mild osteoarthritis changes of the tibiotalar joint. There are mild osteoarthritic changes of the posterior subtalar joint as well as the middle subtalar joint. There are osteoarthritic changes of the talonavicular joint. There is a small joint effusion of the tibiotalar joint. There is evidence of a remote sprain of the anterior talofibular ligament.

Fact: As noted above, an MRI with contrast is more clear and designed to highlight certain parts of the soft tissue which better helps the Radiologist to diagnose the condition.

4. RBA, Page 13: States: "There was no characteristic callouses"..... "rupture or edema." ....., extreme tenderness of plantar surfaces of the feet, marking inward displacement" .....

Fact: The Veteran's STRs reveal a "Callus" diagnosis effective April 7, 1981; a VA Hospital Musculoskeletal Clinic Progress Note, San Diego, (La Jolla) reveals "callosity" effective December 5, 2005; and Nationwide MRI (Right Ankle), dated September 27, 2014, reveals soft tissue "edema."

On this basis, the VA failed to obtain these accessible documents when they were gathering evidence.

Additional probative evidence is available to confirm these medical issues and disabilities but cannot be further addressed at this time due to the Veteran's pending Notice of Disagreement.

5. Unsure.

6. RBA, Page 4: I would have liked to at least have had an opportunity to give the Judge a more informed explanation as to how my pending Notice Of Disagreement strongly relates (Nexus) to my denied service connected disabilities entailing low back, bilateral knee, and an entitlement to an evaluation in excess of 30 percent for plantar fasciitis with degenerative arthritis of both feet.

*This refusal, or disregard of supporting evidence has strengthened the VA's case and lessened my credibility and opportunity to provide proof of sufficient evidence. In conjunction with their leverage, the RBA's verbiage reads in a condescending manner by undermining my etiological competency, and disabilities, and is focusing primarily on debatable timelines, rather than the seriousness of this Veteran's service-connected disabilities.*

I believe my pending Notice Of Disagreement is a nexus between my in-service and present day disabilities brought before this Court. For the Court's information, the issues regarding this pending Notice Of Disagreement originates from 2015, yet, is still in a pending status.

7. Reverse the BVA decision in support of probative evidence and the benefit-of-the-doubt-rule; or at least, remand all three of my denied service-connected disabilities by taking into consideration that my deep-rooted characteristic callosities were prominent and relevant throughout the Appeals period.

It is strongly believed that my characteristic callosities are a nexus between my in-service and present-day disabilities of low back, bilateral knee, and an entitlement to an evaluation in excess of 30 percent for plantar fasciitis with degenerative arthritis of both feet. There is probative value in this nexus, coupled with the benefit-of-the-doubt-rule in supporting these service-connected disabilities. It is also requested that the remanded disabilities be taken into consideration for approval.

Should this Court dismiss my Appeal, it should be noted that the Transcript of Hearing, before the Board of Veterans' Appeals, dated June 5, 2017, is not fully translated, and sporadically does not convey the Veterans full responses to certain questioning, due to missing verbiage throughout the transcript.

Although a Motion was requested and granted to address the transcript and transcript disc issue(s), there were reported actions preventing this Veteran from positively fulfilling his request in the allotted timeframe.

These actions resulted in an On-Line Complaint referral to the U. S. Postal Service, Office of Inspector General (OIG). This sensitive matter of compromise entailed questionable mail tampering of the transcript and its envelope, and vandalism of the transcript disc package (UPS) during these deliveries. Resulting status of this matter can be addressed upon inquiry. Subsequent signs of targeting, harassment (tracking with cult-like behavior), and possible conspiring, were, and are evident.

Benjamin J. Seltzer IV

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A motion through the U.S. Court of Appeals for Veteran's Claims was filed requesting to seal my record concerning my Appeal and this sensitive matter; however, this motion was denied by the U. S. Court of Appeals for Veterans Claims on February 28, 2019.

This Veteran's U. S. Court of Appeals for Veteran's Claims Notice Of Appeal (NOA) was opened (according to staff) on December 28, 2018, with no returned correspondence or issues of concern, and I hereby request that the NOA be reviewed in its entirety. Thank you for your time and consideration concerning these matters.

Respectfully,

  
BENJAMIN J. SELTZER IV

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