

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

**Vet. App. No. 19-1771**

**JEFFERY L. RIGBY,**

**Appellant**

**v.**

**ROBERT L. WILKIE,**

**SECRETARY OF VETERANS AFFAIRS**

**Appellee.**

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**APPELLANT'S BRIEF**

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## **I. STATEMENT OF THE ISSUES**

- A. Whether The Board Of Veterans' Appeals Commits Remandable Error When It Provided An Inadequate Statement Of Reasons And Bases For Discounting Evidence Of A Higher Evaluation For A Psychiatric Disorder.**

## **II. STATEMENT OF THE CASE**

### **A. Jurisdiction**

Appellant Jeffery L. Rigby (Rigby) invokes this Court's appellate jurisdiction granted through 38 U.S.C. § 7252 (2018).

### **B. Nature of the Case / Result Below**

Rigby appeals the Board's November 15, 2018 decision that denied entitlement to a rating in excess of 50 percent for major depressive disorder (MDD). [R 4-16 (2018 BVA decision)]

### **C. Relevant Facts**

Rigby is an U.S. Navy veteran with honorable service from October 5, 1987, to August 6, 1993. He is a recipient of the Good Conduct Medal, Sea Service Deployment Ribbon, National Defense Service Medal, and the Southwest Asia Service Medal with a Bronze Star. [R 1524 (DD214)] He first filed a claim for an acquired psychiatric condition, secondary to pain from service-connected conditions, in March 2014. [R 859-861 (VA Form 21-4138)]

## **III. ARGUMENTS & AUTHORITIES**

### **MAJOR DEPRESSIVE DISORDER**

**A. The Board provided an inadequate statement of reasons and bases for discounting evidence of a higher evaluation for MDD.**

Rigby received a compensation and pension examination for his MDD in September 2014. [R 161-164 (Psych DBQ)] He received a diagnosis of major depressive disorder, severe, without psychosis. The examiner indicated that his MDD caused “occupational and social impairment with reduced reliability and productivity,” in line with a 50 percent evaluation for MDD. He was given the Beck Depression Inventory and scored 37 points, indicative of “severe” depression.

In our Notice of Disagreement, we noted that Rigby had serious disturbances of motivation or mood, even with the medication he was taking, and he had a GAF score of 50. [R 245-258 (2015 NOD)] While the DSM-V discontinued the use of GAF scores, and the VA adopted the DSM-V as of August 2014, prior to that date the GAF provides evidence of the Appellant’s level of functioning. [R 594-599 (2014 RD)] We also provided a mental health symptoms checklist, where Rigby reported chronic sleep problems, danger of hurting self or others, depression, heavy use of alcohol, neglects family, sense of helplessness, and suicidal feelings/thoughts. [R 858 (MHS Checklist)]

As with any finding on a material issue of fact and law presented on the record, the Board must support its degree-of-disability determination with an adequate statement of reasons or bases that enables the claimant to understand the precise basis for that determination and facilitates review by the Court. 38

U.S.C. § 7104(d)(1) (2019); *Gilbert v. Derwinski* 1 Vet. App. 49, 52 (1990); see *Mittleider v. West*, 11 Vet. App. 181, 182 (1998) (explaining that the need for adequate reasons and bases is “particularly acute when [Board] findings and conclusions pertain to the degree of disability resulting from mental disorders.”)

In this case, while the Board did discuss Rigby’s statement that he has suicidal thoughts/feelings, it did not discuss the results of the Beck Depression Inventory, where he scored 37, indicating “severe” depression. In fact, the BDI reflects that the highest scoring measures of depression were “feeling guilty all the time,” “I dislike myself,” and “I am irritable all the time.” [R 164-165 (Beck Depression Inventory)] He also endorsed thoughts of suicide with no plan. At his psychology consult, Rigby reported that he found the increased irritability distressing. [R 192-194 (Psychology Consult)] The results of the BDI were particularly important in this case as his score on the BDI (with severe depression indicated) does not appear to comport with the examiner’s finding that he had “occupational and social impairment with reduced reliability and productivity.”

The Board at least had a duty to discuss the results of the BDI, as it was favorable evidence of an increased evaluation for depression. While the Board may have dismissed the BDI results as not giving rise to a higher evaluation, or may have determined that the GAF score was not probative evidence due to the adoption of the DSM-V, it should have provided an adequate statement of

reasons or bases on those issues. *Lathan v. Brown*, 7 Vet. App. 359, 367 (1995). Absent an adequate statement of reasons and bases for why the GAF score and BDI score were not probative or compelling, judicial review is frustrated. 38 U.S.C. § 7104(d)(1) (2019).

### **CONCLUSION**

The Board committed remandable error when it failed to provide adequate reasons and bases for discounting favorable evidence of an increased evaluation for MDD. The claim must be remanded.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify, to the best of my knowledge and ability, under penalty of perjury under the laws of the United States, that copy of the forgoing was served electronically to the attorney of record for the party below:

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