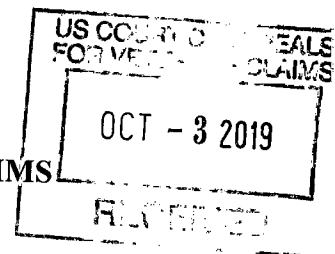


UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
625 Indiana Avenue, NW Suite 900
Washington, DC 20004-2950



APPELLANT'S INFORMAL BRIEF

Docket No: 19-3037

John D. Wilson, Jr.,

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.

Please SEE, ATTACHED INITIAL BRIEF

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.

PLEASE SEE, ATTACHED INITIAL BRIEF

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, INITIAL BRIEF

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, INITIAL BRIEF

APPENDIX

~~REDACTED~~

REDACTED

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?

- 1) FAILURE TO PROVIDE A ADEQUATE "REASONS AND BASES"
- 2) FAILURE TO CONSIDER "TREATING PHYSICIAN"
- 3) FAILURE TO CONSIDER "LAY STATEMENT" OF IN SERVICE OCCURRENCE
- 4) ~~FAILURE~~ FAILURE TO CONSIDER SECONDARY TO PHYSICAL DISABILITIES

PLEASE SEE, INITIAL BRIEF

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, INITIAL BRIEF

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?

REVERSAL AND REMAND TO CONSIDER: REMAND TO REGIONAL OFFICE.
1) TREATING PHYSICIAN CONTINUOUS DIAGNOSIS OF PTSD FROM 2000 TO PRESENT, BVA FAILED TO CONSIDER THIS ONGOING DIAGNOSIS
2) CONSIDER LAY STATEMENT OF IN SERVICE OCCURRENCES
3) CONSIDER SECONDARY CAUSE DUE TO PHYSICAL DISABILITIES

8. If you needed extra pages to answer the questions above, how many extra pages did you attach to this form? 4222 APPENDIX RETRACTED

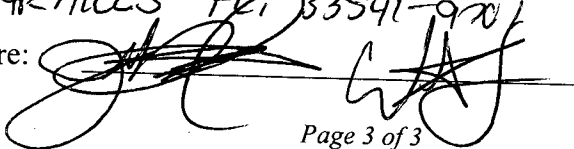
Please remember that your brief cannot exceed 30 pages total (including this form). Do not attach any pages from the RBA.

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: (813) 872-5521

Appellant's Address: ZEPHYR HILLS CORRECTIONAL INSTITUTION, 2739 GALL BLVD, ZEPHYR HILLS FL 33541-9901

Appellant's Signature: 

Date: SEPT 20, 2019

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
625 Indiana Avenue, NW Suite 900
Washington, DC 20004-2950

NOTICE TO FILE BRIEF TO THE SELF-REPRESENTED APPELLANT

DOCKET NO: 19-3037

JOHN D. WILSON, JR.,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

TO THE SELF-REPRESENTED APPELLANT:

The Secretary's counsel has sent the Record Before the Agency to you.

Your brief is due **within 60 days** after the date of this notice. You may use the informal brief form enclosed with this notice.

Dated: September 10, 2019

FOR THE COURT:

GREGORY O. BLOCK
Clerk of the Court

By: /s/ Juanita Coghill
Deputy Clerk

Copies to:

John D. Wilson Jr.

VA General Counsel (027)

[X] Enclosed: Instructions for submitting the Informal Brief and Informal Brief Form
If you need assistance submitting this form, you may contact the Veterans Consortium Pro Bono Program's Helpline for Self-Represented Appellants at 1-855-446-9678.

Form 12 (Rev 2/2017)

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APPELLANT'S INITIAL BRIEF

UNITED STATES COURT OF APPEALS
FOR VETERAN'S CLAIMS

JOHN DAVID WILSON JR.,
APPELLANT/VETERAN

V.

ROBERT WILKIE,
ACTING; SECRETARY DEPT. OF VET. AFFAIRS,
APPELLEE/SECRETARY

CAVC NO: 19-3037

PRO-SE: JOHN DAVID WILSON JR. #T21940
ZEPHYRHILLS CORRECTIONAL INSTITUTION
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ZEPHYRHILLS, FL 33541-9701
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DATE: SEPT 20, 2019

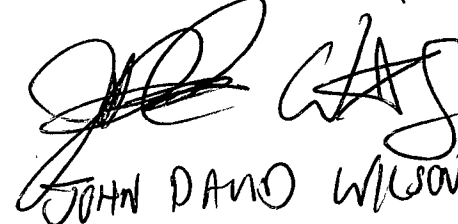

JOHN DAVID WILSON JR #0-721940
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III.

Argument:

Ground One –

The Board of Veteran Appeals, (referred henceforth as – BVA), did not provide an adequate statement of its reason and basis for denying my claim for PTSD¹, or acquired psychiatric disorder, alcohol dependency, and personality disorder, including as secondary to service connected disability² 7-9

Ground Two –

The BVA committed plain error, and reversible error, and is a clear and unmistakable error, (CUE) by giving the examining physician “total weight” in its’ decision, and totally discounted “treating physician” opinions, without stating an adequate “reason and basis” 9-12

¹ Post-Traumatic Stress Disorder will be referenced henceforth as PTSD with this Honorable Court permission, patience, indulgency.

² Due to save time, this court’s patience, the term PTSD is interchangeable with – acquired psychiatric disorder, alcohol dependency, and personality disorder including as secondary to service connected disability.

Ground Three –

The BVA committed CUE by “totally” disregarding “treating physician” over the opinion of “examining physician” 12-14

Ground Four –

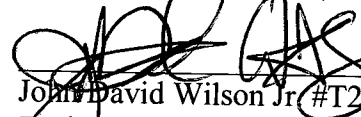
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Respectfully Submitted,



John David Wilson Jr. #T21940
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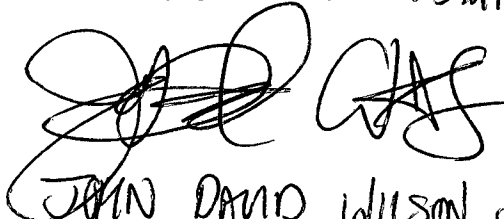
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RESPECTFULLY SUBMITTED



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II

STATEMENT OF THE ISSUES

Whether the BVA provided an adequate statement of the reasons and basis for denying my claims for service connection for the aforementioned claims;

- 1) PTSD
- 2) Depression
- 3) Acquired Psychiatric Disorder
- 4) Alcohol Dependency (in remission)
- 5) Personality Disorder
- 6) Secondary service connection associated with physical disabilities please see, Ex. "A"

Record before the Agency (RBA), page 4-14 (Decision rendered on, Aug. 18, 2018.)

STATEMENT OF THE CASE

I joined the U.S. Navy on Oct. 1985 in delayed entry, till Jan. 26, 1986. Then went active from Jan. 26, 1986 through Jan. 27, 1990. Please see RBA at 728. Then joined the active naval reserves from Jan 90 ^{THRU, JAN 92} then Jan 92; please see, RBA at 728.
_{JAN.}

Due to the Persian Gulf War, and a manpower shortage I reenlisted and returned active from Jan. 92 thru April 94; please see, RBA at 729.

Upon release from active service, I gained a rating of 80% disability.

These disabilities are:

- 1) feet 50% - PES PLANTS WITH ~~PLANTAR~~ FASCITIS
- 2) ankles 30% - LEFT AND RIGHT-ANKLE INVERSION
- 3) back 10% LUMBAR STRAIN
- 4) right thumb 0% HYPER EXTENSION INJURY
- ~~5) Ankles~~

Please see RBA at 3699-3703; also see RBA at 3881-3885. These disabilities have been diagnosed as chronic in nature. Please see RBA at 2488-2489.

A very extensive claim for disability has timely been applied for.

PRESENT APPEAL

On August 31, 2018, the BVA denied my appeal and rehearing; please see R. at 4-14; please see, Ex "A"; please see, Ex "B" Rehearing of Denial by the BVA.

SUMMARY OF ARGUMENT

Ground One: The BVA didn't provide an adequate statement of its reason and basis for denying my claim for PTSD.

ANALYSIS

The BVA opinion is arbitrary, capricious and contrary to well established Federal and Constitutional Law and Procedures. This clear abuse of discretion is contrary to law as follows:

1) The BVA committed CUE by opining in its decision; please see, BVA opinion Ex. "A" RBA, page, (p) 4-14. Where the BVA states,
(The Veteran current diagnosed psychiatric disorder has not been shown to be at least as likely as not causally related to his service, nor casually related to, or Aggravated by, any service connected disability) page 1 [under finding]

DISCUSSION

As the BVA opinion relates to CUE, it is fair and reasonable to conclude that the BVA committed CUE by; failing to consider and evaluate that, "treating physician" diagnosis are to be given "controlling weight" or "substantial weight" over "examining physician".

In the BVA decision, the BVA gave "total weight" to the examining physician without just cause, or reasonably stating standard for its reasoning.

This decision is arbitrary, capricious and contrary to well established Federal and Constitution law and procedure.

Ground Two: The BVA committed CUE by giving "examining physician" "total weight" over "treating physician" without considering lay evidence, and evidence of record.

ANALYSIS

The BVA opinion is arbitrary, capricious and contrary to well established Federal and Constitutional law and procedure. This clear abuse of discretion is contrary to law as follows:

1) The BVA committed CUE by opining in its decision; please see, BVA opinion. Exhibit "A" RBA. p. 4-14; where the BVA states,

(In this case service-connection for PTSD is not warranted as the probative and persuasive evidence of record does not reflect that PTSD has been diagnosed in accordance with the pertinent criteria, namely that detailed in the American Psychiatric Association's diagnostic and statistical manual of mental disorders, 5th Ed. 1994 (DSM-IV) ...)

continued on page 3; paragraph (pr) 4. where the BVA states,

(While a tentative diagnosis of PTSD exists in the record, the probative value of this diagnosis is outweighed by subsequent VA examiner opinion)

DISCUSSION

The BVA overreached its scope, morality, of well established law and procedure that evaluates PTSD claims.

The the BVA "totally" discounted "treating physician" opinions. Opinion that has been in place for the last 15 years or better.

This decision is arbitrary, capricious and contrary to well established Federal and Constitutional law and procedure.

Ground Three: The BVA committed reversible error by “totally” disregarding “treating physician” opinion over “examining physician”.

ANALYSIS

The BVA opinion is arbitrary, capricious and contrary to well established Federal and Constitutional law and procedure. This clear abuse of discretion is contrary to law as follows:

1) The BVA committed CUE by opining in its decision; please see, BVA opinion. In Exhibit “A” RBA. at 4-14 on p.3; pr.5 where the BVA opined.

(In this regard, a July 2016 VA examiner noted that although the Veteran was diagnosed with PTSD by a treating mental health provider from 2001 to 2004 these medical records do not support the diagnoses as the assessment of PTSD appears to have been made through the use of an unstructured interview with the veteran. The examiner explained that the use for measure like the CAPS, which is the “gold standard” in assessing PTSD, significantly improves the ability of an examiner to accurately diagnose PTSD, it is important to assess for not only the presence of a symptom, but it is just as important to assess for the frequency and severity of a symptom because it is possible to have the existence of a PTSD related symptom, but the symptom may not meet DSM-V diagnostic criteria for persistence and severity to warrant the diagnoses of PTSD.

However, none of the mental health professional who have diagnosed PTSD administered a structural interview (e.g. CAPS), administered my objective testing (e.g. M-FAST, SIMS and MENT), reviewed the veteran’s claim file, or followed the American Academy of Psychiatry and Law “practice guideline for forensic evaluation of psychiatric disability” or the “American Psychological Association’s Specificity Guideline for Forensic Psychology” in reaching their diagnostic conclusions. After reviewing the veteran’s entire claims file and conducting a

psychological evaluation of the veteran, the July 2016 VA examiner concluded the results of CAPS did not support the diagnosis of PTSD ...)

DISCUSSION

The BVA examiner opinion was given "great weight" or "total weight" in the BVA decision. It is fair and reasonable to conclude that the BVA (just as in Ground Two) totally discounted the physicians of Florida Department of Corrections, (DOC), as totally unfounded and irrelevant and non-binding.

Even though DOC has psychiatrists (as in the ones who diagnosed me with PTSD) with the same or greater education, experience, and training. The examining physician discarded all there diagnoses as unfounded and unreliable.

This is a clear and evidence violation of well established Federal and Constitutional law and procedure.

These physicians are in a unique position of observing me 24 hours a day. Due to my incarceration, and has greater access than a normal client patient relationship. If so, then observations are more binding than a "examining physician."

Ground Four: The BVA committed CUE by failing to consider lay evidence, as a reason and basis of forming a NEXUS or link of in-service stressor, and this PTSD is also caused by a secondary link to my physical disabilities.

ANALYSIS

The BVA opinion is arbitrary, capricious and contrary to well established Federal and Constitutional law and procedure. This clear abuse of discretion by:

- 1) The BVA committed CUE by failing to accept lay statement as "substantial evidence" of a fellow service member that was an eye witness to the triggering event and legally must be

evaluated as probative by the BVA to support my claim of PTSD. Please see, Exhibit "A" RBA, p.3; pr.2 where the BVA opined.

(Service connection for PTSD requires medical evidence diagnosing the condition in accordance with 38 CFR §4.125(a) (2017); a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. 38 CFR §3.304(1).).

DISCUSSION

The BVA committed CUE by failing to consider, and address in its reasons and basis lay statement of in-service member of Larry Lipton, whom responded to my request for supporting evidence that I placed in the "Veteran" which is distributed approx 4 times a year.

If the BVA would've considered this lay statement it is fair and reasonable to conclude that the BVA would've come to a different conclusion.

Also as related to ground four, that BVA failed to address adequately that my PTSD is a secondary result as my physical disabilities. Whereby the BVA opined; please see, Exhibit "A" RBA. p. 4-14. shown on p.2; pr.5. where the BVA opined.

(Service connection may also be granted on a secondary basis for a disability if it proximately due to or the result of a service-connected disease or injury 38 CFR §3.310(a) 2017. Establishing service-connection on a secondary basis requires evidence sufficient to show:

- 1) That a current disability exist, and
- 2) That the current disability was either. a) proximately caused by or b) chronically aggravated by a service-connected disability. *Allen v. Brown*, 7 VET. APP. 439, 448 (1995) (En Banc)

The BVA failed to consider, reasonably respond in its reasons and basis, and by doing so committed CUE as a matter of law.

III

ARGUMENTS

GROUND ONE

THE BVA DID NOT PROVIDE AN ADEQUATE STATEMENT
OF IT'S REASONS AND BASIS FOR DENYING MY CLAIM
FOR PTSD

A.

SCOPE FOR REVIEW

"The BVA decision is arbitrary, capricious, and a clear abuse of discretion, or otherwise not in accordance with law" This standard is set forth in 38 USC §7261 (a)(3)(A). BVA statement must be adequate to enable claimant to understand precise basis or BVA decision, as well as to facilitate review in the CVA; please see, *Parker v. Nicholson*, 2007 U.S. App. Vet Claims LEXIS 1246.

B

EVIDENCE PRESENTED

- 1) Please see, Exhibit "A" RBA. p. 4-14; shown on p.3; pr.2.
- 2) Please see Exhibit "C" RBA p. 4127 – lay statement of Larry Lipton.
- 3) Please see, this motion on p. 2; section II [under summary of argument ground one].

C

ARGUMENT

While the BVA accepted the "examining physician" diagnoses and opinion as a "total weight" and capriciously disregarded "treating physician" opinions and diagnoses.

As a general rule “treating physician” must be given “substantial weight” or “controlling weight” due to treating physician has a more personal relationship, and able to see his patient on a day-to-day basis.

Where “examining physician” has only access to the patient briefly, and a clinical review of records.

The BVA failed to address treating physician opinions in the BVA reasons and basis, and BVA rejecting “treating physician diagnosis for the wrong reason, and failure to address “all information and medical evidence of record as required by law.” //

D

LEGAL ARGUMENT

While ruling made by BVA found no error on the part of the BVA in its compliance with notice requirement in the VCAA 2000 Act. BVA nonetheless violated “reasons and basis” rule in 38 USC §7104 (d)(1), by relying on results of medical review by VA examiner that incorrectly used negligence standard in §1151 instead of proper standard articulated in §1110; vacuity of entire ruling which was denied service-connection of veteran ankle; knee; and back condition was required because all of issues were intertwined; please see, *Griego v. Peake*, 2007 U.S. App. Vet. Claims LEXIS 2083; also see, BVA failed to consider “all information and lay and medical evidence of record as required by §5107(b) and CFR 3.303(a).

Veteran presentation of numerous diagnosis’s of PTSD and material opinion that his PTSD was incurred in service was sufficient to make veteran claim for service connection was well grounded; please see, *Moreau v. Brown*, VET. APP. 1996, 9 VET 389, 124 Fed. 3d. 228.

BVA is required to provide written statement or basis for its finding and conclusion on all material issue of facts and laws presented on record including its denial of any assistance

specifically sought by veteran; please see, *All Day v. Brown*, VET. APP. 1995, 7 VET. APP. 517.

E

RELIEF REQUESTED

Any and all relief this Honorable Court deems just, fit or proper to include but not limited to.

1) Reversal and Remand with instruction that the BVA or Regional Office consider lay statements, and to write a detail reasons and basis that addresses all claimed disability.

2) Reversal and Remand with instruction that the BVA or Regional Office provide and detailed reason and basis that specifically addresses "treating physician" diagnoses of PTSD, and secondary to service connected disability.

3) Reversal and Remand

4) Any and all relief this Court deems just, fit and proper

5) Grant this initial brief

GROUND TWO

THE BVA COMMITTED CUE BY GIVING EXAMINING
PHYSICIAN "TOTAL WEIGHT" IN IT'S DECISION, AND
TOTALLY DISCOUNTED "TREATING PHYSICIAN"
OPINION, WITHOUT STATING AN ADEQUATE "REASONS
AND BASIS"

A

SCOPE FOR REVIEW

The scopes for review that governs this issue are evaluated by four scopes for review. Firstly, "The BVA decision is arbitrary, capricious, and a clear abuse of discretion, or otherwise not in accordance with law" This standard is set forth in §7261 (a)(3)(A). BVA statement must

be adequate to enable claimant to understand precise basis for BVA decision, as well as to facilitate review in the CVA; please see, *Parker*, *id.* Secondly, when a treating physician opinion “conflicts with that of a non-treating physician,” the BVA may choose whom to credit but “cannot reject evidence for no-reason or for the wrong reasons”; please see, *Morales v. Apfel*, 225 F.3d 310, 315-16 (3rd Cir. 2000). Thirdly, BVA failed to consider “all information and lay and medical evidence of record” as required by §5107(b) and CFR 3.303(d). Fourthly, veteran presentations of numerous diagnosis of PTSD and material opinion that his PTSD was incurred in service was sufficient to make claim for service connection for PTSD was well grounded; please see, *Moreau*, *id.*

B

EVIDENCE PRESENTED

- 1) Please see, Exhibit “A” RBA p. 4-14; shown on p.3; pr.3;
- 2) Please see, Exhibit “C” RBA p.4127-lay statement of Larry Lipton
- 3) Please see, this motion on p. 3; section II [under Summary of Argument Ground Two].

C

ARGUMENT

The BVA discounted “treating physician numerous diagnosis of PTSD. These diagnosis are from 2001 to the present. It is as if the BVA has deemed the Florida Department of Corrections, (DOC) diagnosis as a non-factor and is akin to witchdoctory.

While the physicians of DOC has the same, greater, or more experienced as the “examining physician” the BVA discounted their opinions without just cause. This rejection is contrary to well established Federal Constitutional law and procedure.

The BVA had accepted the “examining physician” but using the wrong standards.

D

LEGAL ARGUMENT

The BVA decision is arbitrary, capricious, and a clear abuse of discretion, or otherwise not in accordance with law; please see §7261 (a)(3)(A). This BVA statement must be adequate to enable claimant to understand precise basis for BVA decision, as well as facilitate review in the CVA; please see, *Parker*, id.

When an examining physician relies on the same clinical finding as a treating physician, but differs only in his or her conclusion, the conclusions of the examining physician are not “substantial evidence”; please see, *Orn v. Astrue*, 495 F.3d 625 (9th Cir. 2007).

A non-examining physician opinion “cannot by itself constitute substantial evidence that justifies the rejection of the opinion of ... a treating physician”; please see, *Lester v. Chater*, 81 F.3d 821 (9th Cir. 1995).

As a general rule, more weight should be given to the opinion of a treating source than to the opinion of doctors who do not treat the claimant. Please see, *Lester*, id.

E

RELIEF REQUESTED

Any and all relief this Honorable Court deems just fit or proper to include but not limited to.

1) Reversal and Remand of the BVA decision, remanding this claim to the Regional Office or BVA with instruction that the BVA or adjudicating body consider “treating physician” opinion as required by law.

2) Reversal and remand to the Regional Office to readjudicate claim and to give “controlling weight” to treating physician.

3) Reversal and remand back to the Regional Office, due to the BVA failure to write a detailed reasons and basis.

4) Reversal and remand.

5) Granting of this initial brief.

GROUND THREE

THE BVA COMMITTED CUE BY "TOTALLY"
DISREGARDING "TREATING PHYSICIAN" OVER THE
OPINION OF "EXAMINING PHYSICIAN"

A

SCOPE FOR REVIEW

The scopes for review that governs this issue are evaluated by three scopes for review. Firstly, the BVA decision is arbitrary, capricious, and a clear abuse of discretion, or otherwise not in accordance with law. This standard is set forth in § 7261(a)(3)(A). BVA statement must be adequate to enable Claimant to understand precise basis for BVA decision, as well as to facilitate review in the CVA; Please see *Parker*, *id.* Secondly, Veteran presentation of numerous diagnosis of PTSD and material opinion that his PTSD was incurred in service was sufficient to make veteran claims for service connection was well grounded; Please see, *Moreau*, *id.* Thirdly, when a treating physician opinion "conflicts with that of a non-treating examining physician, the BVA may choose whom to credit but" cannot reject evidence for no reason or for the wrong reason; Please see *Morales*, *id.*

B

EVIDENCE PRESENTED

- 1) Please see, EXHIBIT "A" RBA. P. 4-14 shown on P. 3; pR. 5
- 2) Please see, EXHIBIT "C" RBA. P. 4127 – Lay statement of Larry Lipton.
- 3) Please see, This motion on p. 4; section II [Under Summary of Argument – GROUND THREE].

C

ARGUMENT

That the BVA committed CUE by totally discounting treating physician. Whom has treated me from 2001 to the present. With diagnosis of PTSD and other acquired mental disorders.

The treating physician has the same qualifications or even greater than the examining physician, and the BVA committed CUE by disregarding their diagnosis with detailing explaining their conclusions in the BVA reasons and bases.

D

LEGAL ARGUMENT

BVA failed to consider "all information and lay evidence and material evidence of record; Please see, § 5107(b)," AWD, CFR 3.303(a).

BVA decision denying veteran entitlement to service-connection. The BVA failed to give "treating physician" "substantial weight" absent clearly articulated good cause for a contrary finding; Please see, *Anderson-Wilson v. Asture*, NO 1: 11 CV 54-WCS, 2012 U.S. DIST LEXIS 5949.

E

RELIEF REQUESTED

Any and all relief this Honorable Court deems just, fit or proper to include but not limited to:

- 1) Reversal and Remand of the BVA decision due to a failure of BVA to consider all evidence of record.
- 2) Reversal and Remand of the BVA decision due to the BVA failure to give treating physician substantial weight.
- 3) Reversal and Remand due to a failure of the BVA to give adequate reasons and bases in it's decision.
- 4) Reversal and Remand of BVA opinion due to BVA failure to consider all information.
- 5) Grant this Initial Brief.

GROUND FOUR

BVA COMMITTED CUE, AND PLAIN ERROR BY FAILING TO CONSIDER LAY EVIDENCE, AS A REASON AND BASES FOR FORMING A NEXUS, OR LINK OF IN SERVICE STRESSOR; AND THAT MY PTSD IS CAUSED BY A SECONDARY LINK TO MY PHYSICAL DISABILITIES.

A

SCOPE FOR REVIEW

The scope of review that governs this issue is evaluated by three scopes of review. Firstly, a PTSD claim disorder claim is well grounded where; the veteran has submitted medical evidence of current PTSD disability; lay evidence of an in-service or aggravation; and medical evidence of a NEXUS between service and the current PTSD disability; Please see, *Harty v.*

West, VET. APP. 2000 14 VET. APP. 1. Secondly, BVA erred in denying entitlement to compensation for osteoarthritis secondary to thoracic muscle injury for which veteran was wounded based on VA examiner's failure to address whether muscle injury aggravated veteran's shoulder, neck and ribs arthritis; Please see, *Davis v. Shinseki*, 2019 U.S. APP VET CLAIMS LEXIS 188. Thirdly, examiner concluded that based on veteran's record military history and evaluation, he could find no stressor nor any reason to diagnose PTSD; furthermore, examiner did not explain whether his findings were based on lack of verification of stressor, or on other criteria of Diagnostic and Statistical Manual of Medical Disorders (4th Ed. 1994); Moreover, it was unclear whether examiner consider veteran September 2001 statement attesting to his PTSD stressor, given that examiner did not discuss several stressors mention by the veteran, such deficiencies rendered examination inadequate; Please see *Sola v. Peake*, 2008 U.S. APP. VET. CLAIMS LEXIS 1701.

B

EVIDENCE PRESENTED

- 1) Please see, EXHIBIT "A" RBA. P. 4-14; Shown on P. 3; Pr. 2.
- 2) Please see, EXHIBIT "C" RBA. P. 4127 – Lay statement of Larry Lipton.
- 3) Please see, This motion on p. 5-6; section II [Under Summary of Argument GROUND FOUR].

C

ARGUMENT

That the BVA failed to consider lay statement of in-service stressor of the Nexus of my PTSD; and, also failed to consider previous diagnosis of PTSD by treating physician, and failed further to consider secondary service connection as a basis that stems from these physical disabilities.

The BVA failed to address these issues in its reasons and basis of its opinion; Please see, EXHIBIT "A" RBA. P. 4-14; Shown on P.3; Pr. 2.

Within procedures and statutes of the BVA, it is legally necessary to address all information the BVA failed in its duties to address these claims, and by doing so violated well established Federal and Constitutional laws and procedure.

D

LEGAL ARGUMENT

BVA erred in denying entitlement to compensation for osteoarthritis secondary to thoracic muscle injury for which veteran was compensated under § 1151 because VA examination was inadequate; Remand was warranted based on VA examiner's failure to address whether muscle injury aggravated veteran's shoulder, neck, and ribs arthritis; Please see, *Davis v. Shinseki*, 2009 U.S. APP. VET. CLAIMS LEXIS 188. A PTSD claim disorders claim is well grounded where; the veteran has submitted medical evidence of current PTSD disabilities lay evidence of an in-service stressor which in a PTSD case is the equivalent of in-service incurrence or aggravation; and medical evidence of a NEXUS between service and the current PTSD disability; please see, *Harty v. West*, Vet. App. 2000 14 Vet. App. 1.

E

RELIEF REQUESTED

Any and all relief this Honorable Court deems just, fit or proper to include but not limited to.

1) Reversal and remand with instruction, that the BVA or Regional Office consider lay statements, and to write a detailed opinion that addresses and consider all evidence presented.

2) Reversal and Remand with instructions that the BVA or Regional Office provides a detailed "reasons and basis" that specifically addresses the following:

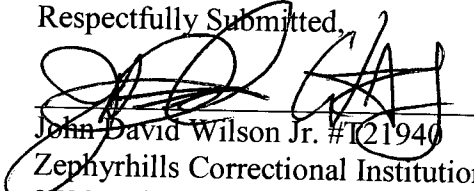
- a) Lay statement – of in-service occurrence.
- b) Does my physical disabilities attribute to my PTSD.
- c) Reversal and Remand.
- d) Any and all relief this Court deems just, fit, and proper.
- e) Grant this initial brief

IV

CONCLUSION

As the BVA failed to provide an adequate statement of reasons or basis for their determination that I'm entitled to service connection for my PTSD, the case must be remanded for an adequate decision.

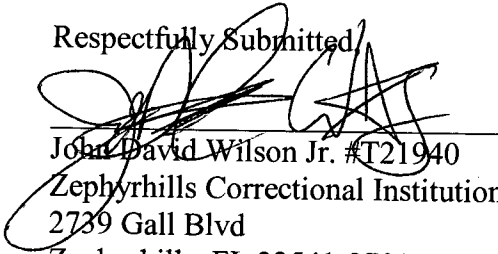
Respectfully Submitted,


John David Wilson Jr. #121940
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OATH/VERIFICATION

Under Penalties of Perjury I John David Wilson Jr. declare that I have read the foregoing Initial Brief, and the fact stated in it are true.

Respectfully Submitted,



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