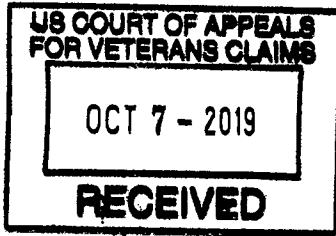


ORIGINAL



Docket No: 19-3228

Robert I. Atkinson, Appellant

v.

Robert L. Wilkie
Secretary of Veterans Affairs, Appellee

Appellant's Informal Brief

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 that 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.

My appeal was as follows:

***Service connection for Sleep Apnea (secondary to
PTSD) - Record Before The Agency (R.) 371***

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

2. For each issue(s) you listed in Question 1, did the Board incorrectly state any facts?
Yes X 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.

The BVA made finding as follows:

***The Veteran is service connected for an anxiety; therefore, the second element
of service connection is met for secondary service connection.... (R.) 6.***

SEE ATTACHMENT FOR #2

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

Yes ___ No X

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.

See Attachment for #2

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 X

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.

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

Yes X No ___

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

38 U.S.C. § 5107(b) & 38 C.F.R. 3.303 should have been applied I was entitled to the benefit of the doubt. I was entitled to have my claim decided on "all" the evidence.

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

Yes X No

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

See Argument at 345.

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?

Grant service connection for Sleep Apnea (secondary to PTSD).

8. If you needed extra pages to answer the questions above, how many extra pages did you attach to this form? 2

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

On any attached pages, make sure to include your name and your Court docket Number, which is listed at the top of each page of this form.

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

Date: 10/3/19

Appellant's Signature 

ATTACHMENT #2

ROBERT I ATKINSON

DOCKET NO: 19-3228

The appeal turns on a showing of whether his current diagnosis of sleep apnea was caused or aggravated by his service connected anxiety disorder. The Board finds that the most probative evidence does not support secondary service connection. (R.) 6.

This is a case where the VLJ decided if he/she will or will not follow the medical treatise.

Luck of the Draw

If I had been lucky and got a difference Veteran Law Judge, my claim may have Been granted. See below:

Citation Nr: 1404457

Decision date: 01/31/14 Archive Date: 02/10/14

DOCKET NO. 13-02 100

The Board notes that the VA examiners and private LPA have provided conflicting opinions as to whether the Veteran has established a diagnosis for PTSD. However, as these opinions were provided by competent mental health professionals using the DSM-IV criteria, and the Board cannot find a basis for which one opinion is more probative than the other, the Board finds that when resolving all reasonable doubt in favor of the Veteran, the Veteran has established a current diagnosis of PTSD.....

Order

Entitlement to service connection for PTSD is granted.

ATTACHMENT #2 CONT'D

ROBERT I ATKINSON

DOCKET NO: 19-3228

See Also

THE VA EXAMINER VS VETERANS TREATING PHYSICIAN

BVA DOCKET NO. 13-02 800 (Citation Nr: 1404457) sets forth that:

"The Board cannot find a basis for which one opinion is more probative than the other, [therefore] the Board finds all reasonable doubt in favor of the Veteran"

The VA examiner's opinion, according to the Board, is not due greater weight than that of the treating doctor.

In the BVA DECISION DOCKT NO. 16- 959 dated August 29, 2019, the Veteran was Granted Sleep Apnea secondary to PTSD. Whether a claim is granted is based on which VLJ you are lucky enough to get a VLJ who follow medical treatise.

In the BVA DECISION DOCKT NO. 08-17 407 dated April 12, 2013, the Veteran was granted Sleep Apnea secondary to PTSD. Weather a claim is granted is based which VLJ you are lucky enough to get who follows medical treatise.

In the BVA DECISION DOCKT NO. 13-12 222 dated December 20, 2013, the Veteran was granted Sleep Apnea secondary to PTSD. Weather a claim is granted is based on which VLJ you are lucky enough to get who follows medical treatise.

There are many many cases like the above. Everything is based on the luck of the draw on which VLJ you are able to draw.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America that on **October 3, 2019**, a copy of this Informal Brief was mailed, postage prepaid to:

ASHLEY VARGA
Appellate Attorney
Office of the General Counsel
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
(202) 632-5428

A handwritten signature in cursive script, appearing to read "Robert J. Allen", written over a horizontal line.

Appellant's signature

Mr. Robert I. Atkinson
4654 Pennoak Rd.
Greensboro, NC 27407

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