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

Marlon V. Phillips,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 19-2953
)	
Robert L. Wilkie,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	
_____)	

BRIEF OF APPELLANT

Pursuant to U.S. Vet. App. R. 28 and 31, the Appellant, Marlon V. Phillips (hereinafter veteran), respectfully submits to the United States Court of Appeals for Veterans Claims, the initial brief of the Appellant in the above-captioned case. Appellant appeals from the decision of the Board of Veterans Appeals (Board or BVA) dated February 19, 2019, in which the Board denied the veteran's claims for service-connected benefits for an acquired psychiatric disorder, not including posttraumatic stress disorder (PTSD), claimed as depression, and for alcohol abuse disorder and cannabis abuse disorder.

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STATEMENT OF THE ISSUE

The Board erred in finding that the lay evidence submitted by the veteran and his mother was not credible.

STATEMENT OF THE CASE

A. Course of Proceedings

The veteran served in the United States Marine Corps from June 24, 1996 to November 13, 1996. R. at 1970 (1970). The veteran filed a formal claim for service-connected benefits for depression in April 2014. R. at 2080, 2082 (2080-2086). In November 2014, VA issued a Rating Decision (RD), denying the veteran's claim. R. at 1472-1479 (1472-1479). In January 2015, the veteran filed a Notice of Disagreement (NOD), appealing VA's denial of his claim for service-connected benefits for posttraumatic stress disorder (PTSD), to include depression. R. at 1443 (1443).

In June 2016, VA sent the veteran a letter, requesting clarification of the issues being appealed in his NOD. R. at 1394 (1394-1398). Later that month, the veteran responded to VA's letter, clarifying that the only issue being appealed in his January 2015 NOD was the denial of his claim for service-connected benefits for an acquired psychiatric disability. R. at 1393 (1392-1393). VA issued a Statement of the Case in July 2016. R. at 1364-1387 (1364-1387). The veteran submitted his VA Form 9 in September 2016. R. at 1244 (1243-1244).

In February 2019, the Board remanded the veteran's claim for an increased evaluation for his bilateral knee patellofemoral syndrome and reopened and then denied his claim for service-connected benefits for PTSD. R. at 4-16 (4-18). The Board also

denied the veteran's claims for service-connected benefits for an acquired psychiatric disorder other than PTSD (claimed as depression) and for alcohol abuse disorder and cannabis use disorder. R. at 4-16 (4-18). The veteran is limiting his arguments on appeal to his claims for service-connected compensation for a psychiatric disorder other than PTSD (claimed as depression) and for alcohol abuse disorder and cannabis use disorder.

B. Relevant Facts

Throughout September and October 1996, entries were made stating that the veteran was unable to qualify at the rifle range and that he continued to receive "counseling" for his failure to qualify. R. at 2609-2612 (2609-2612). The veteran reported that he was unable to qualify due to the required position causing pain in his knees. R. at 2610 (2609-2612). An entry from September 30, 1996 showed that in response to the veteran's report as to why he was unable to qualify that he was instructed to "work on his positions correctly." R. at 2610 (2609-2612).

In September 1996, the veteran reported to a medical examiner that he had been unable to get into position for firing his rifle due to his knees hurting and instead he just fired off rounds so he could get out of the position he was required to be in. R. at 1991 (1991). The veteran reported that he was demotivated and that he did not believe he could do it. R. at 1991 (1991). The examiner stated that the plan was for the veteran to continue his trial of full duty. R. at 1991 (1991). However, the examiner noted that "recruits final statement is that recruit just doesn't want to be here." R. at 1991 (1991).

An October 1996 note from service stated that the veteran had failed to qualify with his M16A2 after 12 attempts, and that he had a lackadaisical attitude. R. at 2538 (2538).

In a February 1997 letter, the veteran's mother, Deborah Phillips, stated that when her son entered the military, he had left home a vibrant young man with a good self-esteem of himself and great plans for his future. R. at 2836 (2836). She stated that the veteran had sent home several letters while stationed at Parris Island, South Carolina, which she described as very sad, depressing letters. R. at 2836 (2836). She stated that the veteran indicated that he felt as though he was in prison. R. at 2836 (2836).

The veteran's mother also stated that she had received a call from him one day and that he was very upset. R. at 2836 (2836). He told her that he had failed the rifle range, which he had previously attempted to pass on several different occasions, and that his Sergeant had put him down because he had missed the rifle range by 1 point. R. at 2836 (2836). She stated that the veteran was crying uncontrollably and that he informed her that he was "sorry but he could not take it anymore." R. at 2836 (2836). She stated that when the veteran returned home, he was a different person. R. at 2836 (2836). He would wander and sit quietly, would not associate with people very often, became reclusive, appeared depressed, and was unsure of himself. R. at 2836 (2836).

In an undated letter, the veteran stated that during boot camp he witnessed a recruit shooting himself while on the rifle range. R. at 2724 (2724-2731). During training, a drill instructor kicked him in his legs while his legs and ankles were swollen. A drill instructor also spit in his face because he was "not speaking loud enough." R. at

2724 (2724-2731). He stated that he became traumatized by these experiences and that his self-esteem had greatly diminished. R. at 2726 (2724-2731). He stated that those experiences caused him to become very introverted, unable to deal with normal activities of daily living, suffer from nightmares and flashbacks of his experiences in boot camp, and that he no longer had any desire to achieve anything in his life. R. at 2726 (2724-2731). He further stated that he was unable to stay focused, hold down a job, complete his education, or maintain relationships with others, and that he also began to suffer from alcohol and substance abuse. R. at 2728 (2724-2731). He stated that he had carried all of “this baggage” inside of him since 1996, and that he needed to get help as he began feeling as though he was going to either harm himself or someone else. R. at 2730 (2724-2731).

The veteran reported symptoms of depression in May 2002. R. at 2664-2665 (2664-2665). In a May 2006 medical report, an examiner stated that the veteran had problems with anxiety and stress which he reported that he was unable to cope with or handle. R. at 2495 (2495). The examiner stated that the veteran had a lot of pent up anger. R. at 2495 (2495). The examiner stated that he had reviewed the veteran’s full written narrative of his experiences as a recruit where he was kicked in his already inflamed leg and spit on by a drill Sergeant. R. at 2495 (2495). The examiner stated that he believed that the veteran needed to continue with counseling and treatment through VA. R. at 2495 (2495).

In May 2006, the veteran submitted a statement in support of his claim for an acquired psychiatric disorder. R. at 2415-2417 (2415-2417). He stated that during his

time at the rifle range, he witnessed a fellow recruit inflict a gunshot wound to himself and that this was very traumatic for him. R. at 2415 (2415-2417). He also stated that while in boot camp during physical training, he had complained about his neck and ankles being swollen. R. at 2417 (2415-2417). However, the drill instructor told him that he did not have anything wrong with him and then proceeded to kick him on his ankles. R. at 2417 (2415-2417).

In October 2006, the veteran submitted a personal statement to VA. R. at 2401 (2401). He stated that while in basic training, he witnessed a fellow recruit shoot himself. R. at 2401 (2401). He stated that he was approximately 7-8 recruits down from the recruit who shot himself, and that when the incident occurred, the recruits were all rushed off of the rifle range. R. at 2401 (2401). He further stated that he had been mistreated and kicked by his instructor when he was in the 3rd Battalion which he reported to his Staff Sergeant. R. at 2401 (2401). He was not aware of whether the Staff Sergeant made a formal report of the mistreatment reported by him. R. at 2401 (2401).

In February 2008, the veteran reported “experiencing up and down moods, can’t be around a crowd of people without experiencing anxiety. Reports he flys of (sic) the handle sometimes in anger.” R. 2267 (2267-2273). He stated that he “feels he was abused in the military because when he injured his knees his drill sergeant kicked him, another drill sergeant spit in his face, also when on a rifle range another recriut (sic) in boot camp shot himself in Paris Island, SC.” R. 2267 (2267-2273). He said that he heard the shot, but did not actually witness it. R. 2267 (2267-2273).

The veteran said that he lives at home with his mother but that he “is reclusive” and primarily stays in his room. R. 2267-2268 (2267-2273). It was noted that the veteran endorsed “a severe degree of depression symptoms[.]” R. 2272 (2267-2273). The veteran reported that his “troubles began when he was prematurely discharged from the military only six months in boot camp due to a leg injury.” R. 2272 (2267-2273). It was noted that the veteran also had “chronic anger associated with his military experienced due to what he perceived as verbal harassment (sic) and abuse.” R. 2272 (2267-2273). The veteran was diagnosed with severe major depression and anxiety disorder not otherwise specified. R. 2273. The veteran’s psychologist stated that it was likely “that he used substances to self medicate (‘to try to feel better’).” R. 2273 (2267-2273). A May 2008 medical record noted that the veteran was previously diagnosed with depressive disorder in December 2002. R. at 2260 (2258-2262).

In April 2009, the veteran submitted a personal statement to VA. R. 2241 (2241). He reported that the limitations due to his disability had put a “damper” on his life causing frustration and depression. R. at 2241 (2241).

In June 2015, the veteran’s mother, Deborah Phillips, submitted a personal statement to VA. R. at 1409-1410 (1409-1410). She stated that the veteran’s experience in boot camp was something that he had never experienced before in his life. R. at 1410 (1409-1410). She stated that every letter, card, and phone call from him during service was horrific because she could tell by the sound of his voice that he was not mentally stable. R. at 1410 (1409-1410). She stated that from the moment she saw her son after he was released from the military, she knew that he was no longer the same person. R. at

1410 (1409-1410). He would never sleep, did not eat much, removed himself from his family and friends, was unable to work, was unable to succeed in school, he began drinking, he stopped taking care of himself, had no self-esteem, appeared depressed, and had no desire to do anything. R. at 1410 (1409-1410). She stated that this was devastating to her as the veteran had entered the military service as a well-adjusted young man and returned as a depressed, withdrawn individual with no self-esteem. R. at 1410 (1409-1410). She stated that her heart breaks for her child as the Marines took her son and changed him into a man with no goals or ambition to do anything with his life. R. at 1410 (1409-1410).

SUMMARY OF THE ARGUMENT

The veteran respectfully asserts that the Board erred in finding that the lay evidence submitted by the veteran and his mother was not credible. The veteran's mother submitted two statements describing the veteran's behavior both before, during, and after service, to include the symptoms she observed when he returned home from service. She also discussed the letters and phone calls she received during service. She stated that the veteran indicated that he felt as though he was in prison. She stated that when her son returned home, he was a different person. The veteran also submitted letters describing his in-service experiences and the symptoms he experienced as a result.

The veteran does not dispute the fact that he did not seek medical treatment for a psychiatric condition during service, or that he did not seek treatment after service until 2002. However, he has provided an explanation for this. Furthermore, the fact that the

veteran ***did not*** report his psychiatric symptoms to a medical provider until later did not, in and of itself, nullify the credibility of his statements, or his mother's statements.

In addition, the Board rejected the veteran's mother's statements because they were "vague[.]" R. at 11. However, it is unclear what the Board found to be "vague" in those statements. Both statements included her personal knowledge of the veteran's behavior prior to his entrance into the military service, specific events that had occurred during service which made her aware of the veteran's change in behavior, and her personal knowledge of the veteran's change in behavior following his return from service. Further, notes from the veteran's service records are consistent with both his and his mother's lay statements.

The veteran thus asserts that the Board erred in rejecting his and his mother's statements. He therefore requests that the Court vacate the Board's decision and remand the case for a readjudication of his claims in accordance with the law. *See* 38 U.S.C.S. § 7261(a)(3)(A).

He further asserts that if his claim for service-connected benefits for an acquired psychiatric disorder other than PTSD (claimed as depression) is remanded, then his claim for service-connected benefits for alcohol abuse disorder and cannabis abuse disorder should also be remanded as they are inextricably intertwined.

ARGUMENT

Issue: The Board erred in finding that the lay evidence submitted by the veteran and his mother was not credible.

Pursuant to 38 U.S.C.S. § 7261(a)(3)(A) (2019), this Court may hold unlawful and set aside a decision which rests upon a finding by the Board which is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

In denying the veteran’s claim for service-connected compensation for depression, the Board determined that the veteran did not experience an in-service psychological injury, disease, or event. R. at 12. Rather, the Board concluded that the veteran’s condition began after service. R. at 13. The Board reasoned that (1) the veteran did not report psychiatric symptoms during service, (2) he first reported psychiatric symptoms in 2002, and (3) he first reported that his psychiatric symptoms were related to his military service in 2008. R. at 12-13. The Board also found that the veteran’s lay statements regarding his in-service abuse were not credible. R. at 11-13. The Board further found that the lay statements provided by the veteran’s mother were not credible because they were “vague and also inconsistent with histories and notations in the service treatment records.” R. at 11, 13.

Lay evidence regarding matters about which the veteran or others witnessed or have first-hand knowledge of, such as observed symptomatology, constitutes competent evidence of a claim. *Washington v. Nicholson*, 19 Vet.App. 362, 368 (2005). *See also Espiritu v. Derwinski*, 2 Vet.App. 492 (1992); *Layno v. Brown*, 6 Vet.App. 465 (1994).

The veteran acknowledges that “[d]eterminations of credibility are findings of fact to be made by the Board in the first instance.” *Dalton v. Nicholson*, 21 Vet.App. 23, 38 (2007). Nevertheless, both this Court and the Federal Circuit Court of Appeals have established certain limitations with regard to the bases upon which the Board may reject the credibility of a veteran’s lay evidence. For instance, the Board may not rely upon the **absence** of an official record to reject the credibility of a veteran's lay evidence. *Dambach v. Gober*, 223 F.3d 1376, 1380-81 (Fed. Cir. 2000); *see also Buchanan v. Nicholson*, 451 F.3d 1331, 1337 (Fed. Cir. 2006).

In *Buchanan*, the veteran sought service-connected compensation for a psychiatric condition and asserted that his symptoms, which were not documented in his service treatment records, began during service. 451 F.3d at 1332-33. In support of his claim, the veteran submitted numerous affidavits from those who knew him during that time and who had observed changes in his behavior. 451 F.3d at 1333. The Board rejected the probative value and credibility of these statements due to the lack of objective medical documentation, and rejected the three favorable medical opinions which relied upon such statements. 451 F.3d at 1333.

The Federal Circuit found that the Board’s rejection of the lay evidence submitted by the veteran, to the extent that it was based solely upon the absence of “confirmatory medical evidence,” was error since “the lack of such records does not, in and of itself, render lay evidence not credible.” 451 F.3d at 1336. Thus, the Court held that “the Board cannot determine that lay evidence lacks credibility merely because it is unaccompanied by contemporaneous medical evidence.” 451 F.3d at 1337.

In *AZ v. Shinseki*, 731 F.3d 1303, 1308-1309 (Fed. Cir. 2013), the Board denied the veteran's claim for PTSD due to military sexual trauma (MST) because there was nothing in her service records which substantiated the assault. The Board rejected lay evidence from people who knew her during service and who were aware of the assault because they had not actually witnessed the incident and had only been told about it by the veteran. 731 F.3d at 1308-09. In fact, the Board found that the lay evidence actually *contradicted* the record because it was not supported by official documentation. 731 F.3d at 1309.

In that case, the Court discussed the evidentiary principle relied upon by the majority of courts that the absence of documentation is evidence that an event did not occur only if “an entry would *naturally have been made*” if the event had occurred.” *AZ*, 731 F.3d at 1315 (emphasis in original). Alternatively, “courts have refused to admit evidence of the absence of a record to show that an event did not occur, where it was not reasonable to expect the event to have been recorded.” *AZ*, 731 F.3d at 1316.

In *Kahana v. Shinseki*, 24 Vet.App. 428, 440 (2011), this Court stated that “[o]ne type of evidence that often causes confusion is contemporaneous SMRs that do not record the alleged in-service disease or injury.” Where it appears that a veteran's service records are complete, the Board cannot reject competent lay evidence of undocumented in-service symptoms unless they are the type of symptoms which “would ordinarily have been recorded had they occurred.” *Kahana*, 24 Vet.App. at 440. The Court noted as an example that it would be reasonable to conclude that a compound bone fracture would necessarily be documented as being a condition that would require treatment, but that

medical evidence would be necessary to determine whether a condition with less obvious symptoms would necessarily have been reported and recorded. *Kahana*, 24 Vet.App. at 440.

Furthermore, “as a general matter ‘[w]hen assessing a claim, the Board may not consider the absence of evidence as substantive negative evidence.’ *Buczynski v. Shinseki*, 24 Vet.App. 221, 224 (2011).” *Horn v. Shinseki*, 25 Vet.App. 231, 239 (2012).

In a February 1997 letter, the veteran’s mother, Deborah, stated that when her son entered the military, he had left home a vibrant young man with a good self-esteem of himself and great plans for his future. R. at 2836. She stated that the veteran had sent home several letters while stationed at Parris Island, South Carolina which she described as very sad, depressing letters. R. at 2836. She stated that the veteran indicated that he felt as though he was in prison. R. at 2836. She also stated that she had received a call from him one day and that he was very upset. R. at 2836. He informed her that he had failed the rifle range, which he had attempted to pass on several different occasions, and that his Sergeant had put him down because he had missed the rifle range by 1 point. R. at 2836. She stated that the veteran was crying uncontrollably and that he informed her that he was “sorry but he could not take it anymore.” R. at 2836. She stated that once her son returned home, he was a different person. R. at 2836. He would wander and sit quietly, would not associate with people very often, became reclusive, appeared depressed, and was unsure of himself. R. at 2836.

In an undated letter, the veteran stated that during boot camp he had witnessed a recruit shooting himself while on the rifle range. R. at 2724. During training, a drill

instructor kicked him in his legs while his legs and ankles were swollen. A drill instructor had also spit in his face because he was “not speaking loud enough.” R. at 2724. He stated that he became traumatized by these experiences and his self-esteem had greatly diminished. R. at 2726. He stated that those experiences caused him to become very introverted, unable to deal with normal activities of daily living, suffer from nightmares and flashbacks of his experiences in boot camp, and that he no longer had any desire to achieve anything in his life. R. at 2726. He further stated that he was unable to stay focused, hold down a job, complete his education, maintain relationships with others, and that he began to suffer from alcohol and substance abuse. R. at 2728. He stated that he had carried all of “this baggage” inside of him since 1996, and that he needed to get help as he began feeling as though he was going to either harm himself or someone else. R. at 2730.

In a May 2006 medical report, an examiner stated that the veteran had problems with anxiety and stress which he reported that he was unable to cope with and handle. R. at 2495. The examiner stated that the veteran had a lot of pent up anger. R. at 2495. The examiner stated that he had reviewed the veteran’s full written narrative of his experiences as a recruit where he was kicked in his already inflamed leg and spit on by a drill Sergeant. R. at 2495. The examiner stated that he believed that the veteran needed to continue with counseling and treatment with VA. R. at 2495.

In May 2006, the veteran submitted a statement in support of his claim for an acquired psychiatric disorder. R. 2415-2417. He stated that during his time at the rifle range, he witnessed a fellow recruit inflict a gunshot wound to himself and that this was

very traumatic for him. R. at 2415. He also stated that while in boot camp during physical training, he had complained about his neck and ankles being swollen. R. at 2417. However, the drill instructor told him that he did not have anything wrong with him and proceeded to kick him on his ankles. R. at 2417.

In October 2006, the veteran submitted a personal statement to VA. R. at 2401. He stated that while in basic training, he witnessed a fellow recruit shoot himself. R. at 2401. He stated that he was approximately 7-8 recruits down from the recruit who shot himself, and that when the incident occurred, the recruits were all rushed off of the rifle range. R. at 2401. He further stated that he had been mistreated and kicked by his instructor when he was in the 3rd Battalion which he reported to his Staff Sergeant. R. at 2401. He was not aware of whether the Staff Sergeant made a formal report of the mistreatment reported by him. R. at 2401.

In February 2008, the veteran stated that he “feels he was abused in the military because when he injured his knees his drill sergeant kicked him, another drill sergeant spit in his face, also when on a rifle range another recruit (sic) in boot camp shot himself in Paris Island, SC.” R. at 2267. He said that he heard the shot, but did not actually witness it. R. at 2267. The veteran said that he lives at home with his mother but that he “is reclusive” and primarily stays in his room. R. at 2267-2268. The veteran reported that his “troubles began when he was prematurely discharged from the military only six months in boot camp due to a leg injury.” R. 2272. It was noted that the veteran also had “chronic anger associated with his military experience due to what he perceived as verbal harassment (sic) and abuse.” R. 2272. The veteran was diagnosed with severe major

depression and anxiety disorder not otherwise specified. R. 2273. The veteran's psychologist stated that it was likely "that he used substances to self medicate ('to try to feel better')." R. 2273.

In April 2009, the veteran submitted a personal statement to VA. R. at 2241. He reported that the limitations due to his disability had put a "damper" on his life causing frustration and depression. R. at 2241.

In June 2015, the veteran's mother submitted another statement to VA. R. at 1409-1410. She stated that the veteran's experience in boot camp was something that he had never experienced before in his life. R. at 1410. She stated that every letter, card, and phone call from him while he was in service was horrific because she could tell by the sound of his voice that he was not mentally stable. R. at 1410. She stated that from the moment she saw her son after he was released from the military, she knew that he was no longer the same person. R. at 1410. He would never sleep, did not eat much, removed himself from his family and friends, was unable to work, was unable to succeed in school, he began drinking, he stopped taking care of himself, had no self-esteem, appeared depressed, and had no desire to do anything. R. at 1410. She stated that this was devastating to her as the veteran had entered the military service as a well-adjusted young man and returned as a depressed, withdrawn, no self-esteem individual. R. at 1410. She stated that her heart breaks for her child as the Marines took her son and changed him into a man with no goals or ambition to do anything with his life. R. at 1410.

In this case, the veteran has not disputed the fact that he did not complain of, or seek medical treatment during service or until 2002, for his acquired psychiatric disorder.

However, he has explained that he had carried all of “this baggage” inside of him and that he decided that he needed to get help once he began feeling as though he was going to either harm himself or someone else. R. at 2730.

The Board relied heavily on the fact that the veteran’s service medical records did not document psychiatric symptoms when it found that his lay statements were not credible. However, the Court has held that there must be some valid basis to support an inference that a veteran’s testimony concerning an alleged injury or event would have been recorded in a medical record before the lack of any such recording can serve as the basis for finding the veteran’s testimony incredible. *Kahana*, 24 Vet.App. at 433-434. *See also Buchanan*, 451 F.3d at 1337 (holding that the lack of contemporaneous medical records does not, in and of itself, render lay evidence not credible).

In the present case, the Board failed to provide a valid basis to support an inference that the veteran’s psychiatric symptoms would necessarily have been recorded in his service medical records. The veteran thus asserts that the Board violated the Court’s holdings in both *Kahana* and *Buchanan*, as it improperly relied upon the **absence** of evidence to deny the veteran’s claim. The fact that the veteran **did not** report his psychiatric symptoms to a medical provider until later did not, in and of itself, nullify the credibility of his statements, particularly in light of his statements that when he tried to report other symptoms during service, his drill instructor had kicked him. R. at 2417. The veteran has also referenced carrying baggage inside of himself and has said that he did not seek help until he felt like he might harm himself or someone else. R. at 2730.

The veteran further asserts that the fact that he did not seek treatment until 2002 did not nullify the credibility of the statements provided by his mother.

It is also unclear what the Board found to be “vague” in the statements provided by the veteran’s mother. R. at 11. Both statements included her personal knowledge of the veteran’s behavior prior to his entrance into the military service, specific events that had occurred during service which made her aware of the veteran’s change in behavior, and her personal knowledge of the veteran’s change in behavior following his return from service. R. 1409-1410, 2836.

Even more so, notes from the veteran’s service records are consistent with both his and his mother’s lay statements. Service records from September and October 1996 noted that the veteran was unable to qualify at the rifle range and that he had continued to receive “counseling” for his failure to qualify. R. at 2609-2612. The veteran reported that he was unable to qualify due to pain in his knees caused by being in the required position to fire his rifle. R. at 2610. A September 30, 1996 record indicated that in response to the veteran’s report as to why he was unable to qualify that he had been instructed to “work on his positions correctly.” R. at 2610.

In addition, the veteran reported to a medical examiner in September 1996 that he was unable to get into position for firing his rifle due to his knees hurting and instead he just fired off rounds so he could get out of the position he was required to be in. R. at 1991. The veteran reported that he had felt demotivated and that he did not believe he could do it. R. at 1991. The examiner stated that the plan was for the veteran to continue his trial of full duty. R. at 1991. However, the examiner noted that “recruits final

statement is that recruit just doesn't want to be here." R. at 1991. An October 1996 note from service stated that the veteran had failed to qualify with his M16A2 after 12 attempts, and that he had a lackadaisical attitude. R. at 2538.

Therefore, the veteran asserts that the Board erred in rejecting the credibility of the lay evidence submitted by the veteran and his mother in this case, which was, in fact, competent, credible and probative. He further asserts that the Board's determination in this respect was wholly contrary to the holdings in *Buchanan, AZ*, and *Kahana*. The veteran thus requests that the Court vacate the Board's decision and remand the case for a readjudication of his claims in accordance with the law. *See* § 7261(a)(3)(A).

Additionally, if the veteran's claim for service-connected benefits for a psychiatric condition other than PTSD (claimed as depression) is remanded, then he respectfully asserts that his claim for service-connected benefits for alcohol abuse disorder and cannabis abuse disorder should also be remanded as they are inextricably intertwined. The CAVC has held that where a decision on one issue could have a "significant impact" upon another, and that impact in turn "could render any review by this Court of the decision [on the other claim] meaningless and a waste of judicial resources," the two claims are inextricably intertwined. *Harris v. Derwinski*, 1 Vet.App. 180, 183 (1991) *overruled on other grounds Tyrues v. Shinseki*, 23 Vet.App. 166, 177 (2009) (stating "to the extent it stands for the proposition that this Court has no jurisdiction over a Board decision that denied a claim if that claim is 'inextricably intertwined' with another claim that the Board remanded. The Court has jurisdiction over such matters on direct appeal, but may decline to exercise its jurisdiction in such cases, as we frequently do."). *See also*

Smith v. Gober, 236 F.3d 1370, 1373 (Fed. Cir. 2001) (holding that where the facts underlying two claims are “sufficiently intertwined,” the claims should be considered together).

The veteran respectfully asserts that his claim for service-connected benefits for alcohol abuse disorder and cannabis abuse disorder is inextricably intertwined with his claim for service-connected benefits for a psychiatric condition other than PTSD. Entitlement to service-connected benefits for alcohol abuse disorder and cannabis abuse disorder is only possible if secondary to a service-connected condition. *See* 38 C.F.R. § 3.301(c)(2), (3); *see also* 38 C.F.R. § 3.310(a). Furthermore, there is evidence in the record that the veteran’s substance abuse disorders are related to his psychiatric condition. R. 2273, 2728. Therefore, if the Court remands the veteran’s claim for a psychiatric condition other than PTSD, then he respectfully requests that his claim for service-connected benefits for alcohol abuse disorder and cannabis abuse disorder also be remanded.

CONCLUSION

The veteran respectfully requests that this Court vacate the Board’s decision dated February 19, 2019, and remand his claims for further proceedings in accordance with the arguments and authorities above.

Respectfully submitted,

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