

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

Vet. App. No. 19-2657

ANGELA M. MITCHELL,

Appellant

v.

ROBERT L. WILKIE,

SECRETARY OF VETERANS AFFAIRS

Appellee

APPELLANT'S BRIEF

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I. STATEMENT OF THE ISSUES

- A. Whether the Board provided an adequate statement of reasons or bases for its decision to deny Appellant's claim for headache disability when it did not discuss favorable evidence which would render the condition inextricably intertwined with other remanded claims.**

II. STATEMENT OF THE CASE

A. Jurisdiction

Appellant, Angela M. Mitchell (Appellant), invokes this Court's appellate jurisdiction granted through 38 U.S.C. § 7252.

B. Nature of the Case / Result Below

Appellant appeals the Board's July 29, 2018 decision that denied her claim of entitlement to service connection for migraine headaches. R. 5-19 (December 2018 Board Decision). Specifically, the Board denied Appellant's headache claim because it found that the evidence did not suggest that Appellant's migraine headache disorder was related to the treatment of any of Appellant's other claimed medical conditions. R. 8 (5-19) (December 2018 Board Decision). Absent a relevant medical examination, the Board based their conclusion regarding service connection for headaches solely on service treatment records and Appellant's separation examination, which did not contain complaints of headaches. R. 8-9 (5-19) (December 2018 Board Decision).

C. Relevant Facts

Appellant is a U.S. Navy veteran of the war in Southwest Asia with honorable service from February 1988 to February 1993. R. 1720 (DD-214). In April 2005, Appellant's treatment records reflect that she sought treatment for frequent migraine headaches. R. 1828-30 (April 2005 Physical Examination Report). She started taking medication, which she reported did not help. R. 1822-24 (February 2007 Physical Examination Report).

Appellant filed a claim for service connection for her headaches on October 6, 2015. R. 1496 (October 2015 VA Form 21-526b). The VA denied the claim in a decision dated November 23, 2015, stating that there was no evidence linking the condition to active duty military service. R. 1423-25 (November 2015 Rating Decision). Appellant filed a Notice of Disagreement to appeal the denial of service connection. R. 1388-96 (December 2015 Notice of Disagreement). Without providing an examination, the VA continued the denial of service connection for headaches in a Statement of the Case dated December 22, 2016 and Appellant responded by timely submitting her substantive appeal. R. 978-1003 (December 2016 Statement of the Case); 954 (January 2017 VA Form 9).

III. SUMMARY OF THE ARGUMENT

The Board failed to discuss evidence in the record, both within Appellant's medical records and submitted by Appellant, which linked her headaches with claims for acquired psychiatric disorder, hypertension, hysterectomy, endometriosis, and ovarian cysts. The relevant evidence showed that Appellant's headaches could be caused by any of the listed conditions, which were all remanded. In failing to discuss the favorable evidence, the Board failed to remand the claim for headaches as inextricably intertwined with the remanded claims for acquired psychiatric disorder, hypertension, hysterectomy, endometriosis, and ovarian cysts.

IV. ARGUMENTS & AUTHORITIES

- A. The Board provided an inadequate statement of reasons or bases when it failed to discuss favorable evidence in the record which would have resulted in the claim for headaches being remanded as inextricably intertwined.**

The Board denied Appellant's claim for a headache disorder, finding that her headaches were not incurred in or aggravated by or during active service. R. 6 (5-19) (December 2018 Board Decision). The Board erred because it failed to discuss evidence in the record linking Appellant's headaches to conditions and medications taken for conditions remanded by the Board in the same decision.

The Board must support its material determinations of fact and law with

adequate reasons or bases. 38 U.S.C. § 7104(d)(1); *Pederson v. McDonald*, 27 Vet.App. 276, 286 (2015); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995); *Gilbert v. Derwinski*, 1 Vet.App. 49, 56-57 (1990). To comply with this requirement, the Board must analyze the credibility and probative value of evidence, account for evidence it finds persuasive or unpersuasive, and provide reasons for its rejection of material evidence favorable to the claimant. *Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff'd per curiam*, 78 F.3d 604 (Fed. Cir. 1996) (table).

In this instance, the Board failed to address favorable evidence which reasonably raised an alternative theory of recovery. Specifically, the record raised the theory that Appellant's headaches were caused or aggravated by her remanded medical conditions or by medications which were prescribed in treatment of those remanded medical conditions.

In the decision on appeal, the Board remanded Appellant's claim for acquired psychiatric disorder to include insomnia, anxiety, and PTSD. R. 9 (5-19) (December 2018 Board Decision). The record shows that Appellant has been prescribed eszopiclone/Lunesta and bupropion/Wellbutrin in treatment of her remanded acquired psychiatric disorder. R. 32 (31-35) (February 2018 Mental Health Note); 322 (321-23) (April 2017 Sleep Center Note); 330 (330-43) (April 2017 Mental Health Note). Appellant's medical records list headaches as a risk

or side effect of Appellant's medications. R. 550 (547-51) (March 2013 Mental Health Note).

In addition to the side effects of medications, Appellant submitted an article which indicated a connection between headaches and PTSD. R. 1679-81 (January 2001 Article: Reliving Trauma). As the article stated, "Physical symptoms such as headaches, gastrointestinal distress, immune system problems, dizziness, chest pains, or discomfort in other parts of body are common in people with PTSD. Often, doctors treat these symptoms without being aware that they stem from an anxiety disorder." *Id.*

The Board also remanded Appellant's claim for hypertension. R. 10 (5-19) (December 2018 Board Decision). She has been prescribed atenolol, clonidine, and chlorthalidone in treatment of her remanded hypertension condition. R. 257 (257-59) (March 2017 Sleep Center Report); 322 (321-23) (April 2017 Sleep Center Note); 330 (330-43) (April 2017 Mental Health Note). Appellant's medical records list headaches as a risk or side effect of Appellant's medications. R 550 (547-51) (March 2013 Mental Health Note).

In the same decision, the Board also remanded claims for residuals of a hysterectomy, endometriosis, and ovarian cysts. R. 9 (5-19) (December 2018 Board Decision). Appellant's treating physicians appear to have linked

Appellant's headaches to hot flashes suffered as residuals of hysterectomy, endometriosis, and ovarian cysts, in that they have prescribed a singular medication to treat both conditions. R. 2171 (September 2010 Medical Record).

The Board was obligated to consider every theory reasonably raised by the record in sympathetically awarding the greatest benefit available. *See Robinson v. Mansfield*, 21 Vet. App. 545 (2007), *aff'd sub nom*, 557 F.3d 1355 (Fed. Cir. 2009); *Schroeder v. West*, 212 F.3d 1265 (Fed. Cir. 2000). However, the Board failed to address the instances in the record showing that Appellant's headaches were associated with conditions or medications for conditions which were remanded by the Board. The Board also never acknowledged the article submitted by Appellant showing a link between PTSD, which was remanded, and headaches.

Had the Board acknowledged the evidence in the record linking Appellant's headaches to her remanded conditions of acquired psychiatric disorder, hysterectomy, endometriosis, and ovarian cysts, it may have found that the claim for headaches must also be remanded because the claims were inextricably intertwined. In other words, development on the acquired psychiatric disorder, hysterectomy, endometriosis, or ovarian cysts may potentially reveal a basis for service connecting Appellant's headaches. *See Floyd v. Brown*, 9 Vet.App. 88,

96 (1996); *Harris v. Derwinski*, 1 Vet.App. 180, 183 (1991) (holding that, where a decision on one issue would have a “significant impact” on 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); *see also Tyrues v. Shinseki*, 23 Vet.App. 166, 178 (2009) (holding that the Court “retains its discretion to determine at the threshold that a claim or theory denied by the Board ... is so inextricably intertwined with matters being remanded to VA that it should be remanded to VA to await development or disposition of a claim or theory not yet finally decided by VA”).

The Board’s erred in failing to address favorable evidence and remand Appellant’s claim for headaches as inextricably intertwined with other remanded claims. Therefore, remand of the claim is warranted. *See Tucker v. West*, 11 Vet.App. 369, 374 (1998) (holding that remand is warranted “where the Board has incorrectly applied the law, failed to provide an adequate statement of reasons or bases for its determinations, or where the record is otherwise inadequate.”).

CONCLUSION

The Board failed to provide an adequate statement of reasons or bases when it failed to discuss evidence favorable to Appellant’s claim and therefore

failed to remand the headache claim as inextricably intertwined with other remanded claims. The Board's decision should be vacated and the appeal remanded with instructions to properly interpret the law.

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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on November 12, 2019.

/s/ Stephani Bennett
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