IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

Vet. App. No. 18-5433

JO L. HAUGH,
Appellant,

v.

ROBERT L. WILKIE,
Secretary of Veterans Affairs,
Appellee.

ON APPEAL FROM THE
BOARD OF VETERANS' APPEALS

BRIEF OF APPELLEE SECRETARY OF VETERANS AFFAIRS

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	)	
Appellee.	)	

ON APPEAL FROM THE
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BRIEF OF THE APPELLEE
SECRETARY OF VETERANS AFFAIRS

I. ISSUE PRESENTED

Whether the U.S. Court of Appeals for Veterans Claims (Court) should affirm the June 4, 2018, decision of the Board of Veterans' Appeals (Board) that denied entitlement to service connection for a partial hysterectomy, to include as due to a service-connected post-operative corpus luteum cyst.

II. STATEMENT OF THE CASE

A. Nature of the Case

Appellant, Jo L. Haugh, appeals, through counsel, the June 4, 2018, Board decision that denied entitlement to service connection for a partial hysterectomy, to include as due to a service-connected post-operative corpus luteum cyst. (Record Before the Agency (R.) at 4-11); *see* Appellant's Brief (App. Br.). The Secretary requests that the Court affirm the Board's June 4, 2018, decision.

B. Statement of Facts

Appellant served on active duty from July 1974 to July 1978 and from October 1980 to August 1996. (R. at 884; 882). She has reported that she experienced breakthrough bleeding while pregnant with her second child, who she gave birth to in April 1976. (R. at 274 (272-95)). A physical examination in October 1978, after her first period of active duty, noted a history of urinary tract infections (UTIs) with no complications and no sequelae, a tilted uterus during pregnancy with no treatment, and excessive menstrual flow treated with birth control pills (BCP). (R. at 692 (691-92)); *see* (R. at 665). Pelvic examination in May 1980 was normal. (R. at 664; 660 (660-63)).

Service treatment records (STRs) show that Appellant was diagnosed with right corpus luteum cyst with ectopic pregnancy in April 1981. (R. at 634; 563). She underwent laparotomy with rupture of the cyst and oversewing of the bleeding edges in April 1981, with a subsequent miscarriage. (R. at 563; 634; 658).

Appellant gave birth to another child in February 1982, where she experienced breakthrough bleeding again and underwent an elected bilateral tubal ligation, as she did not want any more children. (R. at 562; 654); *see* (R. at 275 (272-95)).

In a January 1985 Report of Medical History, the examiner notes, *inter alia*, her (1) corpus luteum cyst in April 1981, treated by laparotomy with rupture of cyst, no problems since, no complications, no sequelae, (2) tubal ligation in 1982, no complications, no sequelae, (3) recurrent UTIs "all have been treated, last occurrence Oct[ober 19]83; no comp[lications], no seq[uelae]," and (4) "[c]hanges in menstrual pattern refers to pregnancies." (R. at 568 (567-68)). Her pelvic examination was normal. (R. at 647 (647-48)).

Appellant's in-service post-partum and annual gynecological pelvic examinations were normal. (R. at 437-38, 640 (May 1982); 404, 639 (September 1984); 390, 637 (January 1986); 384, 645 (December 1987); 378, 644 (May 1989); 361, 635 (May 1991); 357, 641 (May 1992); 594 (593-94), 460-61 (March 1996)).

At her annual exam in May 1992, she complained of increased cramping with menses, for which she was prescribed Motrin. (R. at 357). She returned in June 1993 complaining of spotting for 3 to 4 months. (R. at 618). The note states that "she did say that somebody told her that she had fibroids of the uterus a number of years ago; however, on her last exam done within a month ago nobody mentioned fibroids at that point [in] time. However, I suspect that maybe the bleeding could be secondary to the fibroids. She is agreeable to trying her on some Ortho-Novum 777 [an oral contraceptive]." *Id.* There is no other mention of fibroids in service.

In 1994, Appellant was treated for bacterial vaginitis. *See* (R. at 342; 464 (336-37, 464)).

On separation from service in August 1996, her pelvic examination was normal. (R. at 565 (565-66, 569)); *see also* (R. at 594 (593-94), 460-61 (March 1996 normal annual gynecological examination)).

Following separation from service, a VA regional office (RO) granted service connection for corpus luteum cyst, post-operative, with a noncompensable evaluation, in a November 1997 rating decision. (R. at 1636-38 (1632-41)).

Post-service treatment records show no treatment for any gynecological disorder for many years after Appellant's August 1996 discharge from service.

Post-service medical treatment records show treatment for urinary stress incontinence in January 2005. (R. at 1506). A February 2005 treatment note documents mixed

incontinence with overactive bladder. (R. at 1503). Appellant was treated with Detrol. (R. at 1424).

An October 2005 treatment record notes menorrhagia and that Appellant requested Motrin for cramps. (R. at 1269 (1267-70)). She received a diagnosis of uterine prolapse[1] later that month. (R. at 1265 (1264-66)); *see* (R. at 1412). A November 2005 gynecology note shows diagnoses of stage II uterine prolapse with traction cystocele[2] (stage II uterine and anterior wall prolapse with bulk symptoms). (R. at 1261-63); *see* (R. at 1122-23 (1120-24); 1247-48 (1246-48)). In July 2006, Appellant underwent a transvaginal hysterectomy due to her stage II uterine with traction cystocele. (R. at 1120-24; 1246-48). In the 2006 preadmission history and physical exam, Appellant had complaints of spotting for the last 6 months to a year and pelvic bulge symptoms. (R. at 1121; 1247). She denied dysmenorrhea (painful menstruation[3]) or dyspareunia (pain with intercourse[4]), with some metrorrhagia (irregular bleeding[5]), but no menorrhagia (menstruation with abnormally heavy or prolonged bleeding[6]). (R. at 1121; 1247).

In September 2008, Appellant filed a claim seeking service connection for three conditions: "1. Partial Hysterectomy resulting from prior uterine conditions[,] 2. Labium

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[1] "Pelvic organ prolapse occurs when a pelvic organ such as bladder, urethra, uterus, vagina, small bowel, or rectum drops (prolapse) from its normal place in the abdomen. Conditions associated with pelvic organ prolapse include: uterine or vaginal vault prolapse, cystocele, urethrocele, rectocele, enterocele, or any combination thereof." 38 C.F.R. § 4.116, Diagnostic Code (DC) 7621, Note.

[2] Cystocele is a "hernial protrusion of the urinary bladder, usually through the vaginal wall." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (DORLAND'S) 471 (31st ed. 2007).

[3] DORLAND'S at 586; *see also* (R. at 168 (167-69)).

[4] *See* DORLAND'S at 586.

[5] *See* DORLAND'S at 1172, 1152; *see also* (R. at 168).

[6] *See* DORLAND'S at 1152.

Varicose Veins[, and] 3. Bladder condition due to detached uterus," i.e., uterine prolapse. (R. at 1581). She contended that "[t]he conditions that lead up to my hysterectomy started during my active duty service period from 1975 to 1996" and consisted of a diagnosis of tilted uterus, vaginal bleeding during pregnancy, removal of corpus luteum cyst, fibroids, heavy and unpredictable periods, and pain with intercourse. *Id.*

Appellant received a VA Compensation and Pension (C&P) examination in June 2009. (R. at 1102-1110). Regarding her claim for service connection for partial hysterectomy due to prior uterine conditions, the examiner stated she could not provide a nexus opinion regarding Appellant's partial hysterectomy without resort to speculation. *Id.* at 1108.

Regarding her claim for service connection for bladder condition due to detached uterus, Appellant reported during the examination urinary problems beginning while on active duty in 1995, with urinary frequency, nocturia, and stress incontinence since that time and that she was placed on Detrol medication. *Id.* at 1103. The examiner noted that Appellant's records showed multiple UTIs in service, in the early 1980s, many years before discharge. *Id.* at 1108. The examiner indicated that no records were found showing that Appellant was placed on Detrol while on active duty. *Id.* at 1103. Rather, records showing this medication and treatment for urinary frequency were recent records. *Id.* The examiner opined that any relationship between UTIs in service and current urinary problems would be based on mere speculation, as the examiner did not see any diagnosis or treatment for urinary incontinence in her STRs and that her multiple documented treatments for UTIs "may or may not be manifested as incontinence." *Id.* at 1108.

In a July 2009 rating decision, the RO denied service connection for (1) partial hysterectomy secondary to prior uterine condition, to include as secondary to service-

connected corpus luteum cyst, post-operative, (2) labium varicose veins, and (3) bladder condition secondary to detached uterus, to include as secondary to partial hysterectomy secondary to prior uterine condition. (R. at 1089-90 (1082-83, 1088-92)). Appellant did not appeal this decision.

In December 2009, Appellant filed a claim seeking service connection for "Partial Hysterectomy (**Originally claimed in error as** partial hysterectomy resulting from prior uterine condition)." (R. at 1077 (1070-79) (bold emphasis in original)). Appellant stated that "[t]he conditions that lead up to my hysterectomy started during my active duty service from 1975 to 1996" and "consisted of heavy bleeding, spotting, fibroids, unpredictable periods, cramping, and pain during intercourse," and noting that even though she had a tubal ligation in 1982, she was prescribed BCP to treat/control the heavy bleeding and other problems. *Id.* She stated that she "continued to be on [BCP] until they were no[] longer effective and the hysterectomy was performed." *Id.*

The RO denied service connection for partial hysterectomy in a March 2010 rating decision. (R. at 1043 (1040-43, 1045-48)). Appellant filed a timely Notice of Disagreement (NOD) with this rating decision in October 2010, which VA received in November 2010. (R. at 1080). She noted that, although she did not have a partial hysterectomy while in service, it was her contention that she had a history starting on active duty and continuing up to the partial hysterectomy in 2006 of problems with "fibroids, clots, cramps, heavy bleeding, tilted uterus, [and] irregular and painful menstrual periods," which were documented in her STRs. *Id.* She referenced her December 2009 statement, (R. at 1077 (claim seeking service connection for "Partial Hysterectomy (**Originally claimed in error as** partial hysterectomy resulting from prior uterine condition)")), and also included a statement dated "10/29/2010," *see* (R. at 1035). (R. at 1080). In the October 29, 2010, statement, Appellant stated that she

"began to experience menometrorrhagia while on active duty," detailed her in-service signs and symptoms (heavy bleeding, prolonged bleeding, painful menstruation, irregular bleeding) and treatment with Motrin and oral contraceptives, and stated that she ultimately had a hysterectomy in 2006 "to cure my condition." (R. at 1035).

The RO continued the denial of service connection for partial hysterectomy, to include as due to service-connected corpus luteum cyst, post-operative, in an April 2014 Statement of the Case (SOC). (R. at 980-81 (962-81)). Appellant filed a timely substantive appeal in May 2014, in which she requested an independent medical opinion, as well as a Board hearing. (R. at 958-60). In a May 2014 statement, her representative reiterated Appellant's contention that "she suffered from fibroids, clots, cramps, and heavy bleeding while on active duty[,] which is noted at various times in her [STRs]" and that "[STRs] from March 1996 show complaints of heavy bleeding that was reduced due to [BCPs]." (R. at 936-37 (935-37)). A May 2014 letter from a U.S. Air Force (USAF) physician stated that Appellant's history of heavy menstrual bleeding treated with oral contraception, along with other associated conditions, led to her hysterectomy, but provided no rationale for this conclusion. (R. at 297).

Appellant testified before a Veterans Law Judge (VLJ) regarding her claim at a December 2016 Board hearing. (R. at 272-95).

In February 2018, the Board sought a medical opinion from a Veterans Health Administration (VHA) gynecological specialist to clarify whether Appellant's 2006 hysterectomy was related to service or, in the alternative, was caused or aggravated by her now service-connected post-operative corpus luteum cyst. (R. at 172-73 (172-74)). Specifically, the Board requested that the specialist opine as to whether it was at least as likely as not that: (1) Appellant's hysterectomy was due to or the result of an in-service

gynecological condition(s) and/or treatment and (2) Appellant's service-connected bilateral post-operative corpus luteum cyst caused or permanently aggravated a condition leading to her hysterectomy. (R. at 173).

A VA gynecological specialist provided her medical expertise on these medical questions in a March 2018 opinion, providing negative opinions as to both questions. (R. at 167-69).

In June 2018, the Board denied service connection for a partial hysterectomy, to include as due to a service-connected post-operative corpus luteum cyst. (R. at 4-11). This appeal followed.

III. SUMMARY OF THE ARGUMENT

The Court should affirm the Board's June 2018 decision denying entitlement to service connection for a partial hysterectomy, to include as due to a service-connected post-operative corpus luteum cyst. The Board properly considered the evidence of record, had a plausible basis for its determination, and provided an adequate statement of reasons or bases for its findings. Appellant has not persuasively demonstrated clear error with regard to the decision on appeal.

The Board properly considered the claim on appeal, which is, consistent with the basis of entitlement that Appellant has repeatedly claimed, service connection for partial hysterectomy as due to her in-service gynecological conditions and treatment, including menorrhagia and long-term treatment with BCPs, pregnancies with breakthrough bleeding, an April 1981 burst corpus luteum cyst with a resulting terminated pregnancy, a 1982 tubal ligation, and a purported history of in-service fibroids. *See* (R. at 4-11; 1581 (September 2008 statement); 1077 (December 2009 statement); 1080 (October 2010 Notice of Disagreement); 1035 (October 2010 statement); 274-78, 280-81 (272-95) (December 2016

Board hearing transcript)). Appellant fails to demonstrate that there were reasonably raised claims for service connection for other conditions or reasonably raised theories of service connection that the Board erred in failing to address.

The March 2018 VHA medical opinion substantially complies with the Board's February 2018 request for an advisory opinion as the VA gynecologist, after extensive review of Appellant's service and post-service medical records, applied her medical expertise to the facts of this case and provided the Board with her medical judgment on the questions at issue: that Appellant's hysterectomy for uterine prolapse with traction cystocele was not the result of her in-service gynecological conditions and treatment, and that Appellant's service-connected post-operative corpus luteum cyst was not related to her hysterectomy for uterine prolapse with traction cystocele. (R. at 167-69; 172-74).

Finally, the VLJ complied with his duties under 38 C.F.R. § 3.103(c)(2) (2018) and *Bryant v. Shinseki*, 23 Vet.App. 488, 492-93 (2010) (per curiam). Further, Appellant cannot demonstrate prejudice from any purported error because she had actual knowledge of the outstanding issue and evidence necessary to substantiate the claim. *See Mlechick v. Mansfield*, 503 F.3d 1340, 1345 (Fed. Cir. 2007).

IV. ARGUMENT

In all cases, the burden is on the appellant to demonstrate error in the Board decision. *Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (clarifying that the appellant bears the burden of demonstrating error). Moreover, to warrant judicial interference with the Board decision, the appellant must show that such demonstrated error was prejudicial to the adjudication of her claim. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) (holding that the appellant bears the burden of demonstrating prejudicial error). It is the responsibility of the appellant, and the appellant alone, to articulate the basis of her arguments and develop those

arguments sufficient to permit an informed consideration of the same. *See Locklear v. Nicholson*, 20 Vet.App. 410, 416 (2006) (holding that Court will not entertain underdeveloped arguments).

Appellant fails to meet her burden in this case. Accordingly, the Court should affirm the Board's denial of entitlement to service connection.

A. The Board properly denied service connection as it plausibly found that the evidence was against a finding that Appellant's partial hysterectomy was caused or aggravated by her military service or a service-connected disability.

In the decision on appeal, the Board denied service connection for a partial hysterectomy, to include as due to service-connected post-operative corpus luteum cyst, because the probative evidence was against a finding that Appellant's partial hysterectomy was caused or aggravated by her service or a service-connected disability. (R. at 4-11); *see* 38 U.S.C. §§ 1110, 5107; 38 C.F.R. §§ 3.303, 3.310.

The Board's determination of entitlement to service connection "is a question of fact that the Court reviews under the 'clearly erroneous' standard of review set forth in 38 U.S.C. § 7261(a)(4)." *Washington v. Nicholson*, 19 Vet.App. 362, 366 (2005). A finding of fact is clearly erroneous when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Gilbert v. Derwinski*, 1 Vet.App. 49, 52 (1990) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Under the clearly erroneous standard, "if there is a 'plausible' basis in the record for the factual determinations of the [Board], even if this Court might not have reached the same factual determinations, [the Court] cannot overturn them." *Id.* at 53.

A Board decision must be supported by a statement of the reasons or bases that adequately explains the basis of the Board's material findings of fact and conclusions of law

sufficient to enable the claimant to understand the basis of the Board's decision and facilitate judicial review by the Court. *Allday v. Brown*, 7 Vet.App. 517, 527 (1995); *see* 38 U.S.C. § 7104(d)(1); *Gilbert*, 1 Vet.App. at 56-57. To comply with this requirement, the Board must analyze the credibility and probative value of the evidence, account for the evidence it finds persuasive or unpersuasive, and provide the reasons for its rejection of any 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).

To establish service connection, a claimant generally must prove "(1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship [a 'nexus'] between the present disability and the disease or injury incurred or aggravated during service." *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2007). Secondary service connection may be granted for a disability that is proximately due to or the result of an established service-connected disability, 38 C.F.R. § 3.310(a), or for a disability that is aggravated by an established service-connected disability, 38 C.F.R. § 3.310(b); *Allen v. Brown*, 7 Vet.App. 439, 448 (1995) (en banc).

In the June 2018 decision on appeal, the Board denied entitlement to service connection for a partial hysterectomy, to include as due to a service-connected post-operative corpus luteum cyst, as it found that the most probative evidence of record was against service connection on either a direct or secondary basis. (R. at 4, 9-10 (4-11)). The Board's decision is supported by a plausible basis in the record, *see* (R. at 167-69); *Gilbert*, 1 Vet.App. at 53, and it provided an adequate statement of reasons or bases for its findings, including its consideration and weighing of the evidence of record, *see* (R. at 5-10); *Caluza*, 7 Vet.App. at 506; *Allday*, 7 Vet.App. at 527; *Gilbert*, 1 Vet.App. at 56-57.

Appellant does not present any argument or cite any evidence demonstrating that the Board's plausible determination is clearly erroneous. *See* App. Br.; *Hilkert*, 12 Vet.App. at 151; *Washington*, 19 Vet.App. at 366; *Gilbert*, 1 Vet.App. at 53. Rather, she takes issue with (1) the Board's failure to adjudicate purported claims for symptoms that Appellant has not had during the period on appeal, claims that have been finally denied service connection, and theories of service connection that were not reasonably raised by the record, App. Br. at 10-12, (2) whether there was substantial compliance with the Board's request for a medical advisory opinion where the medical expert provided the Board with her medical judgment on the medical questions posed by the Board, thus resolving the issue for which an advisory medical opinion was requested, App. Br. at 5-10, and (3) the VLJ's fulfillment of his duties as hearing officer under 38 C.F.R. § 3.103(c)(2) (2018) and *Bryant*, 23 Vet.App. 488, App. Br. at 12-14.

These arguments are not persuasive. As Appellant has failed to meet her burden of demonstrating error, let alone prejudicial error, in this case, the Court should affirm the Board's June 2018 decision denying entitlement to service connection for a partial hysterectomy.

B. The Board properly adjudicated the claim on appeal.

The Board is required to address only those issues that are expressly raised by the claimant or reasonably raised by the evidence of record. *Robinson v. Mansfield*, 21 Vet.App. 545, 552-56 (2008), *aff'd sub nom. Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009). Appellant asserts that the Board erred in failing to adjudicate claims for service connection for menstrual and urinary disorders (menorrhagia, metrorrhagia, uterine fibroids, and urinary incontinence), claims that Appellant contends were reasonably raised by the record. App. Br. at 10-12. Her argument is wholly unavailing.

Prior to March 2015, VA accepted both formal and informal claims.[7] The law requires that a claim, whether formal or informal, must be reduced to writing and must express an intent to apply for VA benefits and identify the benefits sought. *See* 38 C.F.R. § 3.155(a) (2011) (an informal claim must "identify the benefit sought" and "indicat[e] an intent to apply for one or more benefits"); *MacPhee v. Nicholson*, 459 F.3d 1323, 1325 (Fed. Cir. 2006); *Brokowski v. Shinseki*, 23 Vet.App. 79, 84-85 (2009) ("Thus, it follows that (1) an intent to apply for benefits, (2) an identification of the benefits sought, and (3) a communication in writing are the essential requirements of any claim, whether formal or informal."); *Brannon v. West*, 12 Vet.App. 32, 35 (1998); *see also* 38 C.F.R. § 3.1(p) (2011) (defining a claim as a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement to a benefit). "The mere presence of . . . medical evidence does not establish an intent on the part of the veteran to seek . . . service connection for a condition." *Brannon*, 12 Vet.App. at 35; *see also Criswell v. Nicholson*, 20 Vet.App. 501, 504 (2006). Likewise, the mere presence of a disability does not establish an intent on the part of the veteran to seek service connection for that condition. *See KL v. Brown*, 5 Vet.App. 205, 208 (1993); *Crawford v. Brown*, 5 Vet.App. 33, 35 (1993).

Here, claims for service connection for menstrual symptoms, uterine fibroids, and urinary incontinence were not reasonably raised by the record. Appellant had a partial hysterectomy in July 2006, removing her uterus. *See* (R. at 1123 (1120-24)). Thus, she has no longer suffered from menstrual symptoms such as menorrhagia or metrorrhagia or from uterine fibroids since her hysterectomy in July 2006. She filed her claim for service

[7] Effective March 24, 2015, VA amended its regulations to require that all claims governed by VA's adjudication regulations be filed on a standard form. *See* 79 Fed. Reg. 57,660 (Sept. 25, 2014). That is, effective March 24, 2015, the law no longer allows for informal claims.

connection in this case in December 2009. (R. at 1077); *see also* (R. at 1581 (September 2008 claim)). Without a present disability at the time a claim for VA disability compensation is filed (or diagnosed shortly before) or during the pendency of that claim, there can be no valid claim for service connection for menstrual symptoms or uterine fibroids. *See McClain v. Nicholson*, 21 Vet.App. 319, 321 (2007); *Romanowsky v. Shinseki*, 26 Vet.App. 289, 294 (2013); *Brammer v. Derwinski*, 3 Vet.App. 223, 225 (1992) ("In the absence of proof of a present disability, there can be no valid claim."). Accordingly, Appellant does not have a present disability of menstrual symptoms or uterine fibroids for which a claim for service connection could have been reasonably raised.

The record in this case also does not reasonably raise a claim for service connection for urinary disorder such that the Board erred in not addressing it. Appellant previously filed a claim for service connection for " Bladder condition due to detached uterus." (R. at 1581). It was denied in an unappealed July 2009 rating decision. (R. at 1090 (1082-83, 1088-92)); *see also* (R. at 95 (91-96) (May 2018 rating decision code sheet listing as not service connected "BLADDER CONDITION SECONDARY TO DETACHED UTERUS ASSOCIATED WITH PARTIAL HYSTERECTOMY," coded as DC 7517)); 38 C.F.R. §§ 4.115b, DC 7517 (bladder injury, to be rated as voiding dysfunction), 4.115a (ratings of the genitourinary system—dysfunctions, providing to rate voiding dysfunction as "urine leakage, frequency, or obstructed voiding"). Appellant's argument requests that the Court find the claim that was already presented and finally denied by VA was reasonably raised by the record. Such an argument is without support in the law, and it must fail. *See Hilkert*, 12 Vet.App. at 151; *see also* 38 U.S.C. §§ 5108, 7104(b); *Locklear*, 20 Vet.App. at 416.

Similarly, Appellant's argument that the Board erred in failing to adjudicate an alternative theory of service connection for post-service hysterectomy as due to in-service

and post-service urinary disorders, App. Br. at 10-12, is unavailing. She asserts in her brief that the record reasonably raised a theory of service connection that her in-service urological and urinary symptoms—to the extent she had any—"where [sic] either indicia of uterine prolapse or otherwise contributed to her uterine prolapse which in turn necessitated removal of her uterus," App. Br. at 10. To the extent that this, too, is merely a request that the Court find that the claim that was finally denied by VA serve as a reasonably raised theory of service connection, the Court should reject it.

As noted, Appellant claimed service connection for "1. Partial Hysterectomy resulting from prior uterine conditions[,] 2. Labium Varicose Veins[, and] 3. Bladder condition due to detached uterus" in 2008. (R. at 1581). Following VA's development of those claims, *see* (R. at 1102-10), she was denied service connection for those conditions in a July 2009 rating decision, (R. at 1089-90 (1082-83, 1088-92)). She did not appeal this denial. Rather, in December 2009, she filed a claim for service connection for "Partial Hysterectomy (**Originally claimed in error as** partial hysterectomy resulting from prior uterine condition)," (R. at 1077 (emphasis in original)). VA thereafter adjudicated her claim, properly, consistent with the evidence of record and Appellant's claimed basis of entitlement: that her 2006 hysterectomy was the result of her in-service gynecological conditions and treatment, including menorrhagia and long-term treatment with birth-control medication, pregnancies with breakthrough bleeding, an April 1981 burst corpus luteum cyst with a resulting terminated pregnancy, a 1982 tubal ligation, and a purported history of fibroids. (R. at 1581 (September 2008 statement); 1077 (December 2009 statement); 1080 (October 2010 Notice of Disagreement); 1035 (October 2010 statement); 274-78, 280-81 (272-95) (December 2016 Board hearing transcript)); *see* (R. at 980-81 (962-81) (April 2014 SOC); 172-74 (February 2018 Board request for VHA medical opinion)). This was proper.

Further, while Appellant now appears to assert that her in-service urological and urinary symptoms—to the extent she had any—"where [sic] either indicia of uterine prolapse or otherwise contributed to her uterine prolapse which in turn necessitated removal of her uterus," App. Br. at 10, she fails to provide any evidence of a nexus between such symptoms and uterine prolapse, let alone between uterine prolapse and service. In support of her argument, she relies on a WebMD article that lists general symptoms of pelvic organ prolapse. App. Br. at 10-11 (citing (R. at 161)). This article does not reasonably raise a theory of service connection or reasonably raise a claim of service connection. The article just shows that symptoms such as feelings of pelvic pressure—which Appellant only demonstrated many years *after* separation from service—and urinary problems, such as involuntary release of urine (incontinence)—which Appellant indicated once in-service, (R. at 336 (336-37) (June 1994 gynecological examination noting Appellant, who had given birth to three children, indicated "yes" to "Do you lose urine when you cough or sneeze?"))—or a frequent or urgent need to urinate—which Appellant repeatedly denied during service, *see, e.g.*, (R. at 336; 593 (593-94))—can be symptoms of pelvic organ prolapse. (R. at 160-61). There is no evidence that the symptoms she did have during service caused or contributed to (or were indicia of) her later uterine prolapse. The VHA examiner found that Appellant had no complaint of bulge symptoms throughout her entire active duty course. (R. at 168 (167-69)). And Appellant's consistently normal pelvic examinations during service belie any notion that she had uterine prolapse during service. *See* (R. at 437-38, 640 (May 1982); 404, 639 (September 1984); 390, 637 (January 1986); 384, 645 (December 1987); 378, 644 (May 1989); 361, 635 (May 1991); 357, 641 (May 1992); 594 (593-94), 460-61 (March 1996)).

As the medical evidence in this case demonstrates, the reason for Appellant's hysterectomy was uterine prolapse with traction cystocele. *See* (R. at 1121 (1120-24); 1246-48; 168 (167-69)). Appellant provides no actual evidence, as opposed to mere lay conjecture by counsel, *see* App. Br. at 10-12; *see also Hyder v. Derwinski*, 1 Vet.App. 221, 225 (1991) ("Lay hypothesizing, particularly in the absence of any supporting medical authority, serves no constructive purpose and cannot be considered by this Court."), that Appellant's uterine prolapse was due to or caused by service. The 2018 VHA examiner opined, after an exhaustive review of the service and post-service medical records, that Appellant's uterine prolapse and traction cystocele—the reasons provided in the medical records for her 2006 hysterectomy—were not "due to or the result of an in-service gynecological condition(s) and/or treatment." (R. at 168 (167-69)) *see also id.* at 169 ("In conclusion for question #1 – the patient's hysterectomy for uterine prolapse with traction cystocele was not the result of her in-service gynecological conditions and treatment, including menorrhagia and long[-]term treatment with birth control medication, pregnancies with breakthrough bleeding[,] or a 1982 tubal ligation."); (R. at 7 (4-11)). Thus, no such claim or theory of entitlement was reasonably raised by the record. *See DeLisio v. Shinseki*, 25 Vet.App. 45, 54-55 (2011). Therefore, Appellant fails to demonstrate error by the Board. *See Robinson*, 557 F.3d at 1361; *Robinson*, 21 Vet.App. at 553 ("The Board commits error only in failing to discuss a theory of entitlement that was raised either expressly by the appellant or by the evidence of record.").

To the extent that Appellant makes an argument regarding *Clemons v. Shinseki*, 23 Vet.App. 1 (2009), App. Br. at 12, there is no *Clemons* issue in this case.[8] *Clemons* concerns the scope of a veteran's claim at the time the claim is filed. The Court in *Clemons* found that although the claimant's original claim "identifie[d] [posttraumatic stress disorder (PTSD)] without more"—a condition that he did not have a diagnosis of—the "breadth of the claim" was not limited to PTSD but also included "anxiety disorder [not otherwise specified] and schizoid disorder, which ar[o]se from the same symptoms for which he was seeking benefits" and for which he submitted evidence of diagnoses of. *Clemons*, 23 Vet.App. at 5. There is no dispute that Appellant has had a partial hysterectomy, which is the condition for which she seeks VA disability benefits. *Clemons* is inapposite here.

As Appellant has not established that there were purported claims for service connection or theories of service connection that were reasonably raised, the Board was not required to address such in its decision on appeal. *See Robinson*, 557 F.3d at 1361 ("Where a fully developed record is presented to the Board with no evidentiary support for a particular theory of recovery, there is no reason for the Board to address or consider such a theory."); *Robinson*, 21 Vet.App. at 553 ("The Board commits error only in failing to discuss a theory of entitlement that was raised either expressly by the appellant or by the evidence of record."); *see also Parrish v. Shinseki*, 24 Vet.App. 391, 398 (2011) (finding no error where Board did not address issue not raised by appellant or reasonably raised by the record); *Sondel v. Brown*, 6 Vet.App. 218, 220 (1994) (when issue is not reasonably raised, Board is not required to "conduct an exercise in prognostication").

[8] The Secretary notes that the language quoted and attributed to the *Clemons* decision in Appellant's brief does not appear in *Clemons*. *Compare* App. Br. at 12, *with Clemons v. Shinseki*, 23 Vet.App. 1 (2009).

C. The March 2018 VHA medical opinion substantially complies with the Board's February 2018 request for an opinion.

Appellant argues that the Board "failed to ensure substantial compliance with its request for an advisory medical opinion" as, she contends, the examiner "failed to include a discussion or analysis of *all* of [her] in-service and post-service gynecological symptoms, conditions[,] and treatments." App. Br. at 5-10. Her argument fails.

Putting aside the issue of whether *Stegall v. West*, 11 Vet.App. 268, 271 (1998) (holding that an order from the Court or the Board remanding an appeal for further action and adjudication confers upon a claimant the right to compliance with that order), controls in a case where an opinion is requested and obtained pursuant not to a remand order, but to a Board's request for an advisory medical opinion pursuant to 38 C.F.R. § 20.906(a) (2019), and VHA Directive 1602, *see* App. Br. at 5-8,[9] Appellant's argument is not persuasive.

As this Court recognized in *D'Aries*, where the Court found that it need not decide the issue of whether *Stegall* would apply in such a case, it is only substantial compliance with the Board's engagement letter that would be required, not strict compliance. 22 Vet.App. at 105 (citing *Dyment v. West*, 13 Vet.App. 141, 146-47 (1999) (holding that there was no *Stegall* violation when the examiner made the ultimate determination required by the Board's remand, because such determination "more than substantially complied with the Board's remand order")). Applying that rule to the instant case, the 2018 VHA examiner's opinion was sufficient to resolve the issue for which the advisory medical opinion was requested. (R. at 168-69 (167-69)). Therefore, there has been substantial compliance with the Board's engagement letter. (R. at 172-74).

[9] Which the Secretary does not concede. *See also D'Aries v. Peake*, 22 Vet.App. 97, 105 (2008).

As the Board noted in the decision on appeal, the 2009 VA examiner was unable to state that Appellant's condition would be connected to service without resort to mere speculation and the May 2014 USAF letter lacked any rationale for its conclusion. (R. at 7 (4-11)). Therefore, the Board requested an advisory medical opinion in order to secure medical expertise from a gynecologist on the medical questions involved in the consideration of Appellant's appeal. (R. at 172-74); *see* 38 C.F.R. § 20.906(a) (2019) ("The Board may obtain a medical opinion from an appropriate health care professional in [VHA] of [VA] on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.").

Appellant's appeal, as the Board noted in its request and consistent with Appellant's claims throughout the adjudication of her service connection claim, regards her claim for service connection for a post-service hysterectomy, to include as secondary to service-connected post-operative luteum cyst; specifically, the basis for Appellant's claimed entitlement is that her 2006 hysterectomy was the result of her in-service gynecological conditions and treatment, including her menorrhagia and long-term treatment with birth-control medication, pregnancies with breakthrough bleeding, an April 1981 burst corpus luteum cyst with a resulting terminated pregnancy, and a 1982 tubal ligation. (R. at 172 (172-74)); *see* (R. at 1581 (September 2008 statement); 1077 (December 2009 statement); 1080 (October 2010 Notice of Disagreement); 1035 (October 2010 statement); 274-78, 280-81 (272-95) (December 2016 Board hearing transcript)). The medical questions involved in the consideration of her appeal, therefore, are whether it is at least as likely as not that (1) Appellant's hysterectomy was due to or the result of an in-service gynecological condition(s) and/or treatment and (2) Appellant's service-connected bilateral post-operative corpus

luteum cyst caused or permanently aggravated a condition leading to her hysterectomy. (R. at 173).

A VA gynecological specialist provided her medical expertise on these medical questions in a March 2018 opinion. (R. at 167-69). Following an exhaustive review of Appellant's in-service and post-service medical records, the VHA examiner opined that Appellant's hysterectomy for uterine prolapse with traction cystocele was not the result of her in-service gynecological conditions and treatment. *Id.* at 168-69. She provided thorough analysis for her conclusion, addressing various aspects of Appellant's in-service gynecological conditions and treatment. *Id.* Similarly, regarding whether Appellant's service-connected post-operative corpus luteum cyst caused or aggravated a condition leading to her hysterectomy, the VHA examiner provided a negative opinion with thorough rationale. *Id.* at 169.

Regarding the first question, the VHA examiner made several observations. (R. at 168-69). She noted that the reason given in the medical records for Appellant's 2006 hysterectomy was "stage II uterine prolapse with traction cystocele," (R. at 1122 (1120-24)), and that, according to the July 2006 preadmission history and physical exam, Appellant had complaints of spitting for the last 6 months to a year and pelvic bulge symptoms and denied dysmenorrhea or dyspareunia, with some metrorrhagia, but not menorrhagia, *id.* at 1121; (R. at 1247 (1246-48)). (R. at 168). The examiner noted that Appellant had no complaints of any bulge symptoms (indicating uterine prolapse) throughout her active service. *Id.*

Regarding Appellant's in-service treatment for dysmenorrhea (cramps) with Motrin, *see* (R. at 1186; 357), the examiner stated that this treatment would not increase her risk of a hysterectomy. (R. at 168). She also noted that Appellant denied dysmenorrhea as one of the causes for her presentation for hysterectomy in 2006. (R. at 168); *see* (R. at 1121; 1247).

Further, regarding the symptoms that Appellant did have during service—irregular and heavy vaginal bleeding, spotting in pregnancy, dysmenorrhea—the examiner noted that Appellant received prescriptions for oral contraceptives (BCP) and that they were the appropriate treatment and that treatment by such has not been associated with any causative correlation with a later hysterectomy. (R. at 168).

Regarding whether Appellant's purported in-service fibroids may have led to her post-service hysterectomy, the examiner noted that her medical records noted only one specific mention of fibroids, in June 1993, which did not contain an actual diagnosis of fibroids but, rather, Appellant's statement that someone told her that she had fibroids of the uterus a number of years prior. (R. at 168); *see* (R. at 618; 8 (4-11)). The examiner noted that Appellant's next physical examination noted that her uterus was normal. (R. at 168); *see* (R. at 565 (565-66, 569); 594 (593-94), 460-61). The examiner noted that, unfortunately, there was no other mention of fibroids in Appellant's service medical records, as every in-service uterine examination was noted as normal, *see* (R. at 437-38, 640; 404, 639; 390, 637; 384, 645; 378, 644; 361, 635; 357, 641; 565, 594), and, therefore, the examiner could not document when Appellant's fibroids developed. (R. at 168). The examiner noted that fibroids can certainly cause irregular and heavy vaginal bleeding, spotting in pregnancy, and dysmenorrhea, all of which Appellant had complained of at one time or another during her active duty. (R. at 168). As such, she opined that it was more likely than not that Appellant's heavy bleeding prior to her 2006 hysterectomy was due to fibroids. *Id.* The examiner continued, however, that the reasons stated for Appellant's hysterectomy were stage II uterine prolapse and traction cystocele, not fibroids. *Id.*; *see* (R. at 1120-23 (1120-24); 1246-48). The examiner explained that neither stage II uterine prolapse nor traction cystocele—

the two conditions that necessitated Appellant's hysterectomy—were "due to or the result of an in-service gynecological condition(s) and/or treatment." (R. at 168).

Regarding the second question, the VHA examiner opined that Appellant's post-operative corpus luteum cyst was not related to her hysterectomy for uterine prolapse with traction cystocele occurring 25 years later. (R. at 169). She explained that ovarian corpus luteum cysts are physiologic and normal and that a corpus luteal in a patient who is pregnant takes on the specific role of producing progesterone throughout the majority of the first trimester and is therefore present for several weeks. *Id.* She explained that it would have been abnormal for a corpus luteum to have been absent at the time of Appellant's 1981 first trimester laparoscopy and that, after miscarriage, the corpus luteum resolves spontaneously. *Id.*

Appellant's argument is ultimately an attempt to impose a reasons-or-bases requirement on the medical examiner, *see* App. Br. at 9 (asserting error because the examiner "failed to include a discussion or analysis of *all* of Appellant's in-service and post-service gynecological symptoms, conditions[,] and treatments" (emphasis in original)), which the Court has expressly rejected, holding that "there is no reasons or bases requirement imposed on examiners," *Acevedo v. Shinseki*, 25 Vet.App. 286, 293 (2012). Rather, a medical opinion is adequate "where it is based upon consideration of the veteran's prior medical history and examinations," *Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007), "describes the disability, if any, in sufficient detail so that the Board's 'evaluation of the claimed disability will be a fully informed one,'" *id.* (quoting *Ardison v. Brown*, 6 Vet.App. 405, 407 (1994)), and "sufficiently inform[s] the Board of a medical expert's judgment on a medical question and the essential rationale for that opinion," *Monzingo v. Shinseki*, 26 Vet.App. 97, 105 (2012) (per curiam).

Here, the VHA examiner performed an exhaustive review of Appellant's service and post-service medical records and then, applying her medical knowledge and expertise to the facts of the case, provided the Board with her medical judgment on the questions at issue and the essential rationale for her opinions. (R. at 167-69); *see Monzingo*, 26 Vet.App. at 105; *Stefl*, 21 Vet.App. at 293; (R. at 172-74); *see also Acevedo*, 25 Vet.App. at 294 (medical report is to be read as a whole, taking into consideration the history, tests, and examinations upon which it is based). She opined that Appellant's partial hysterectomy for uterine prolapse with traction cystocele was not the result of Appellant's in-service gynecological conditions and treatment. (R. at 168-69). The Board thus properly concluded that, because the VHA examiner's opinion was "based on a review of [Appellant's] record and is accompanied by a lengthy analysis and sufficient explanation based on sound medical principles," (R. at 10 (4-11)), it was the most probative medical evidence of record, (R. at 9). *See Madden v. Gober*, 125 F.3d 1477, 1481 (Fed. Cir. 1997) (recognizing that it is the Board's duty, as fact finder, to assess the credibility and probative weight of the evidence).

Appellant fails to establish that the VHA examiner's opinion is inadequate or not in substantial compliance with the Board's February 2018 request. While she asserts that the VHA examiner "failed to offer any discussion or analysis of" all her "in-service and post-service gynecological symptoms, conditions[,] and treatments," lists various symptoms and conditions, and then summarily concludes that the VHA opinion "lacked substantial compliance," she fails to elaborate on this bald assertion. App. Br. at 9-10; *see Locklear*, 20 Vet.App. at 416. The VHA examiner stated that she performed an exhaustive review of Appellant's medical records, both active duty and post-service discharge, which includes all of the evidence cited by Appellant. (R. at 167). "A medical examiner need not discuss all evidence favorable to an appellant's claim when rendering an opinion." *Roberson v.*

Shinseki, 22 Vet.App. 358, 366 (2009); *see Acevedo*, 25 Vet.App. at 293. Here, as noted, the VHA opinion was based on a full review of Appellant's medical records and the opinion was sufficiently detailed to allow for a fully informed Board decision. *See Stefl*, 21 Vet.App. at 123. The VHA examiner's opinion was sufficient to resolve the issue for which an advisory medical opinion was requested. *See* (R. at 7-10 (4-11); 167-69; 172-74). Therefore, there was substantial compliance with the Board's engagement letter. *See D'Aries*, 22 Vet.App. at 105 (finding that there was substantial compliance with the Board's engagement letter where the medical opinion was sufficient to resolve the issue for which an advisory medical opinion had been requested). Ultimately, Appellant fails to demonstrate that the VHA examiner was required to have expressly addressed this evidence in order to render an adequate opinion in substantial compliance with the Board's engagement letter. *See Locklear*, 20 Vet.App. at 416.

Consequently, even assuming, *arguendo*, that Appellant's argument regarding the applicability of *Stegall* to this factual situation is correct, because the VHA examiner provided the opinion requested by the Board and the Board provided sufficient reasons for its reliance thereon, the standard of compliance required by *Stegall* has been demonstrated here and there could be no error. *See D'Aries*, 22 Vet.App. at 105; *Stegall*, 11 Vet.App. at 271; *Dyment*, 13 Vet.App. at 146-47.

D. The VLJ complied with his duties under 38 C.F.R. § 3.103(c)(2) (2018) and *Bryant*, and Appellant is unable to demonstrate prejudicial error.

Appellant contends that the VLJ failed to comply with his duties under 38 C.F.R. § 3.103(c)(2). App. Br. at 12-14. Her argument is not persuasive. First, she fails to demonstrate any deficiency in the December 2016 hearing. *See Hilkert*, 12 Vet.App. at 151.

Second, she fails to demonstrate that any purported deficiency in the December 2016 hearing prejudiced her. *See Sanders*, 556 U.S. at 409.

Pursuant to 38 C.F.R. § 3.103(c)(2) (2018), a VA hearing offer has two distinct duties when conducting a hearing: (1) to "explain fully the issues"; and (2) to "suggest the submission of evidence that may have been overlooked." *Bryant*, 23 Vet.App. at 492. These requirements are designed to "assure [the] clarity and completeness of the hearing record." *Thomas v. Nicholson*, 423 F.3d 1279, 1285 (Fed. Cir. 2005) (quoting 38 C.F.R. § 3.103(c)(2)); *see Bryant*, 23 Vet.App. at 499.

The Court in *Bryant* noted that nothing in the regulation requires the hearing officer to "preadjudicate or otherwise weigh conflicting evidence prior to or at the hearing." *Bryant*, 23 Vet.App. at 493. Rather, a hearing officer's "review of the record in preparation for the hearing is one that should focus on the issues that remain outstanding, and whether evidence has been gathered as to those issues." *Id.* at 496. At the hearing, the hearing officer must "fully explain the issues still outstanding that are relevant and material to substantiating the claim" and "suggest that a claimant submit evidence on an issue material to substantiating the claim when the record is missing any evidence on that issue or when the testimony at the hearing raises an issue for which there is no evidence in the record." *Id.*

If the hearing officer has failed to comply, the claimant must demonstrate prejudice based on the specifics of the case and the evidentiary record. *Bryant*, 23 Vet.App. at 498 (citing *Sanders*, 556 U.S. at 409-10); 38 U.S.C. § 7261(b)(2) (mandating that the Court shall take due account of the rule of prejudicial error).

Appellant argues that the VLJ violated *Bryant* and 38 C.F.R. § 3.103(c)(2) (2018) by failing to suggest submission of evidence on a material issue to substantiate the claim. App. Br. at 12-14. This argument is wholly unavailing. In her selective quotation of the Board

hearing transcript, she mischaracterizes what occurred during the hearing and her argument is without merit. Contrary to her mischaracterization, the VLJ fully complied with his duties under *Bryant* and section 3.103(c)(2). The VLJ explained the issue of service connection, the three elements of service connection, and that the issue in the instant case was nexus. (R. at 281-82 (272-95) (explaining that he would be looking at the three elements of service connection: her hysterectomy, which meets the current disability element, "And you tell me you've had all – all these uh, pregnancy issues and breakthrough bleeding afterwards leading up to the hysterectomy[,] so that shows something in service [the second element]," and that "what we're looking for is that link between them [the third element of nexus]")).

Despite having no obligation to preadjudicate the evidence or suggest the submission of evidence on an issue when there was already evidence of record on that issue, *Bryant*, 23 Vet.App. at 493, 496, the VLJ went above what was required and explained that, regarding the material issue of nexus, the submitted 2014 USAF letter was conclusory and lacked rationale, explained to Appellant that it would be better if there was an opinion that included rationale, and suggested that Appellant have the USAF doctor supplement his opinion and give some rationale. (R. at 282-84 (272-95)). The VLJ also explained that he might, after reviewing the evidence, determine that a VA opinion was necessary, but that Appellant was free to get her own opinion and that if she wanted to do so, he could hold the record open for her to get a supplemental or different opinion. *Id.* at 283-84. Appellant and her representative then discussed getting an opinion and the VLJ explained the benefit of the doubt and burden of production, including that there must be some affirmative evidence demonstrating nexus to service before the benefit of the doubt can come into play. *Id.* at 287-88. The VLJ's explanation came in response to Appellant's stating that while they may not have any evidence currently that said there was a nexus, they also do not have anything that

says there was not a nexus. *Id.* at 287. The VLJ responds to these statements by Appellant and corrects any misunderstanding evidenced by these statements. *See id.* at 287-88.

Further, when Appellant asked "so are you guys [VLJ and her representative] saying that I should see someone else and --- and hold the record open, or should I go with it?," (R. at 293), the VLJ had already fulfilled any duty to suggest the submission of evidence on the material issue of nexus, *see* (R. at 282-88). (Notably, the duty to suggest the submission of evidence is only "when the record is missing *any* evidence on that issue." *Bryant*, 23 Vet.App. at 496 (emphasis added). Here, there was evidence as to nexus—the 2014 USAF letter. *See* (R. at 297). Thus, the VLJ had no duty to suggest the submission of further evidence on that issue. *See Bryant*, 23 Vet.App. at 496-97.) Ultimately, the choice to attempt to obtain and submit an additional nexus opinion—or not—lay solely with Appellant and she, with full awareness, chose not to do so and left it to the VLJ to review the evidence (and maybe send for another VA opinion) and make a decision on the case. (R. at 293). This is evidenced by her own representative explaining (again) the two options and then saying it is essentially unlikely that she is going to get a favorable opinion. (R. at 293). Appellant fails to demonstrate that the VLJ failed to comply with his duties. *See Hilkert*, 12 Vet.App. at 151; *Bryant*, 23 Vet.App. at 492; 38 C.F.R. § 3.103(c)(2) (2018).

Moreover, Appellant is unable to establish that any such purported error is prejudicial, as her statements and her representative's statements (which can be attributed to her) clearly evince actual knowledge of the evidence required.

No prejudice exists when a claimant has actual knowledge of the evidence required. *See Mlechick*, 503 F.3d at 1345 (error is not prejudicial where claimant has actual knowledge of the evidence needed to substantiate the claim); *Mayfield v. Nicholson*, 19 Vet.App. 103, 121 (2005) (noting that no prejudice exists when a claimant has actual knowledge of the

evidence required), *rev'd on other grounds*, 444 F.3d 1328 (Fed. Cir. 2008). "Actual knowledge is established by statements or actions by the claimant or the claimant's representative that demonstrate an awareness of what was necessary to substantiate his or her claim." *Vazquez-Flores v. Peake*, 22 Vet.App. 37, 48-49 (2008).

Here, actual knowledge is established by, at minimum, the statements of Appellant's representative. Appellant's representative stated at the hearing that "what we need now is a positive opinion with the good rational[e] from a doctor indicating that yes, those conditions are attributed to – to the, uh, hysterectomy. Basically, that's – that's what we need is that link. So a professional medical doctor to say that it is related to your time in service." (R. at 287 (272-95)). Appellant's representative's statement establishes actual knowledge because it demonstrates "an awareness of what was necessary to substantiate his or her claim"—a medical opinion regarding a nexus to service or service-connected disability. *See id.*; *Vazquez-Flores*, 22 Vet.App. at 48-49; *see also Bryant*, 23 Vet.App. at 496-97; (R. at 980-81 (962-81) (April 2014 SOC denying claim due to a lack of nexus)).

As Appellant has not met her burden of demonstrating prejudice by any purported deficiency in the December 2016 hearing, the Court should reject her argument and affirm the Board's June 2018 decision. *See Sanders*, 556 U.S. at 409.

E. Appellant has abandoned all issues not argued in her brief.

The Secretary has limited his response to only those arguments reasonably construed to have been raised by Appellant in her opening brief and submits that any other arguments or issues should be deemed abandoned. *See Pieczenik v. Dyax Corp.*, 265 F.3d 1329, 1332-33 (Fed. Cir. 2001); *Norvell v. Peake*, 22 Vet.App. 194, 201 (2008).

V. CONCLUSION

WHEREFORE, in light of the foregoing reasons, the Court should affirm the June 4, 2018, Board decision that denied entitlement to service connection for a partial hysterectomy, to include as due to a service-connected post-operative corpus luteum cyst.

Respectfully submitted,

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