---

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

---

**HUGH J. DAVIS, JR.**,

Appellant,

v.

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

Appellee.

---

**ON APPEAL FROM THE BOARD OF VETERANS' APPEALS**

---

# BRIEF OF THE APPELLEE SECRETARY OF VETERANS AFFAIRS

---

**WILLIAM A. HUDSON, JR.**
Acting General Counsel

**MARY ANN FLYNN**
Chief Counsel

**CHRISTOPHER W. WALLACE**
Deputy Chief Counsel

**ANNA M. CASTILLO**
Appellate Attorney
Office of the General Counsel (027G)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420
(202) 632-6133
anna.castillo50@va.gov

Attorneys for Appellee

---

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Cases



### Statutes



### Regulations



### Record Before the Agency

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

| | | |
|---|---|---|
| **HUGH J. DAVIS, JR.**, | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | |
| v. | ) | Vet.App. No. 19-0746 |
| | ) | |
| **ROBERT L. WILKIE**, | ) | |
| Secretary of Veterans Affairs, | ) | |
| | ) | |
| Appellee. | ) | |

---

**ON APPEAL FROM THE BOARD OF VETERANS' APPEALS**

---

---

# BRIEF OF THE APPELLEE SECRETARY OF VETERANS AFFAIRS

---

## I. ISSUE PRESENTED

Whether the Court should affirm the October 12, 2018, Board of Veterans' Appeals (Board or BVA) decision, which denied entitlement to service connection for sleep apnea, and granted entitlement to service connection for erectile dysfunction and voiding dysfunction.

## II. STATEMENT OF THE CASE

### A. Jurisdictional Statement

The Court has jurisdiction over this appeal pursuant to 38 U.S.C. § 7252, which grants the Court of Appeals for Veterans Claims exclusive jurisdiction to review final decisions of the Board.

**B. Nature of the Case**

Appellant, Hugh J. Davis, Jr., seeks vacatur and remand of the portion of the October 12, 2018, Board decision which denied entitlement to service connection for sleep apnea. *See* [Appellant's Brief [AB] at 1-17]; *see generally* [Record Before the Agency [R.] at 4 (3-12)].

The Court should not disturb the Board's decision insofar as it granted entitlement to service connection for erectile dysfunction and voiding dysfunction. [R. at 4]. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007) (recognizing that the Court will not disturb factual findings by the Board that are favorable to claimants).

**C. Statement of Relevant Facts**

Appellant had active duty service October 1986 to September 1990. [R. at 373], [R. at 374].

In September 1990, Appellant separated from active duty. [R. at 373]. During his separation examination, he denied any issues with shortness of breath or frequent trouble sleeping. [R. at 332-33]. The examination also resulted in normal findings for Appellant's nose, sinuses, mouth and throat. [R. at 330-31].

Thereafter, in October 1993, Appellant entered National Guard service. [R. at 382]. In September 1993, during a medical examination, he again denied any issues with breathing or sleeping, and the examination found no abnormalities in his nose, sinuses and mouth and throat. [R. at 367-68 (September 1993 Report of

Medical Examination)], [R. at 369-70 (Report of Medical History)]. He was discharged from National Guard duty in June 1995. [R. at 382].

Appellant's private medical records identify sleep apnea as a problem as early as 2005 but he reported that he could not complete a sleep study until three years later, in December 2008, when he was diagnosed with sleep apnea and prescribed a continuous positive airway pressure machine (CPAP). [R. at 1254 (1254-55) (May 2005 Otorhinolaryngology Report)], [R. at 826-28 (December 2008 Sleep Study Report)].

He filed a claim for benefits in July 2013 seeking service connection for sleep apnea. [R. at 829-30 (829-44)]. He submitted two buddy statements from his spouse and a friend, Norman Barnes, who served with him. [R. at 831] (Spouse's buddy statement)], [R. at 833 (Mr. Barnes' buddy statement)]. Appellant's spouse reported that she and Appellant married in December 1988 and have remained married for over 25 years. [R. at 831]. She stated that she had "never witnessed any with such a snoring and gasping for air problem" and "begged" Appellant to see a doctor but he refused. *Id*. Mr. Barnes reported that the he remembered Appellant "having problems with his sleep" and "would snore every night to the point that no one wanted to be his bunk mate" and that he made choking noises, snored, and sometimes stopped breathing followed by a very loud gasping noise. [R. at 833]. He also reported that Appellant refused to seek medical attention

because he feared "that he would be remove[d] from his pending Officer Candidate School (OCS) class date."[1] *Id*.

VA provided Appellant with a medical examination in October 2013. [R. at 817-21 (Sleep apnea disability benefits questionnaire)]. The examiner opined that Appellant's sleep apnea was less likely than not related to his service-connected psychiatric disability finding no medical literature linking sleep apnea to the psychiatric disability.[2] [R. at 799 (797-801) (October 2013 Medical opinion)]. In an addendum opinion, the examiner opined that Appellant's sleep apnea was less likely than not related to his military service, noting the large gap in time which lapsed between separation from service and diagnosis, as well as the lack of symptoms evidenced in the record. [R. at 795 (October 2013 Addendum opinion)].

The regional office (RO) denied entitlement to service connection for sleep apnea in an October 2013 rating decision, and Appellant filed a timely notice of disagreement. [R. at 754 (NOD)], [R. at 776 (776-81) (October 2013 rating decision)].

In December 2015, VA provided Appellant another VA examination. [R. at 433-35 (December 2015 Medical opinion)], [R. at 440-45 (December 2015 disability benefits questionnaire)]. The examiner opined that Appellant's sleep apnea was less likely than not related to his military service. [R. at 434]. He

---

[1] Appellant entered OCS in January 1988. *See* [R. at 374].

[2] Appellant was awarded service connection for bipolar depressive disorder in October 2013. [R. at 776 (776-81)].

explained that the in-service symptoms reported by Appellant, his spouse, and Mr. Barnes were "not diagnostic of obstructive sleep apnea (OSA)." [R. at 435]. He explained that although symptoms such as snoring, pauses in breathing, and gasping, are "sensitive for OSA . . . studies have shown poor specificity of these signs and symptoms in diagnosing OSA, and no studies have established causation for these signs and symptoms." *Id*. The examiner further noted that the evidence did not "establish chronicity of condition or treatment stemming from any in-service, injury, illness, or event." *Id*.

In December 2015, a statement of the case (SOC) issued continuing the denial of entitlement to service connection for sleep apnea. [R. at 405-32]. Appellant perfected a timely substantive appeal. [R. at 404]. A supplemental SOC issued in January 2017 continued denial the claim. [R. at 70-77].

On October 12, 2018, the Board denied entitlement to service connection for sleep apnea. [R. at 4]. This appeal followed.

## III. SUMMARY OF ARGUMENT

The Court should affirm the Board's decision denying entitlement to service connection for a sleep apnea. The Board properly relied on the December 2015 medical opinion because the examiner provided a clear conclusion with supporting data and a reasoned medical explanation. Moreover, the record demonstrates that the Board fulfilled its duty to assist in obtaining all of the records which Appellant adequately identified. Lastly, the Board's statement of reasons or bases sufficiently

informs Appellant of the precise basis for the decision and facilitates judicial review.

## IV. ARGUMENT

### A. The Board Did Not Err In Finding That VA Satisfied Its Duty To Assist In Providing An Adequate Medical Opinion Because The December 2015 Examiner Considered Appellant's Prior Medical History And Provided A Clear Conclusion Supported By A Reasoned Medical Explanation.

Appellant contends that the Board erred in relying on the December 2015 VA examination because the examiner did not provide an adequate rationale when concluding that his sleep apnea was less likely than not related to his military service. In the December 2015 medical opinion, the examiner, citing to Appellant's medical and reported history, as well as medical studies, provided an adequate explanation in concluding that Appellant's claimed sleep apnea was less likely than not incurred in or caused by an in-service injury, event, or illness. Because the December 2015 VA examination provided a clear conclusion supported by sufficient detail, the Board's reliance on it was not clear error and the Court should affirm the Board's finding as to the adequacy of this examination.

Establishing service connection generally requires competent evidence of (1) a current disability, (2) an in-service incurrence or aggravation of a disease or injury and (3) a nexus between the claimed in-service disease or injury and the present disability. *See Hickson v. West*, 12 Vet.App. 247, 253 (1999). A finding of service connection is a finding of fact reviewed under the clearly erroneous standard of review. *See* 38 U.S.C. § 7261(a)(4).

The Secretary's duty to assist includes "providing a medical examination or obtaining a medical opinion when such an examination or opinion is necessary to make a decision on the claim. 38 U.S.C. § 5103A(d). Once the Secretary undertakes the effort to provide an examination, even if not statutorily obligated to do so, he must provide an adequate one. *Barr v. Nicholson*, 21 Vet.App. 303, 311 (2007). An adequate medical opinion must be based upon consideration of the relevant evidence and must provide the Board with a foundation sufficient enough to evaluate the probative worth of that opinion. *See Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007); *Ardison v. Brown*, 6 Vet.App. 405, 407 (1994) (explaining that an adequate medical examination is one that is based on consideration of the veteran's prior medical history and describes his or her condition with a level of detail sufficient to allow the Board to make a fully informed decision on the relevant medical question). But this obligation is not insurmountable, and an examination report need not "explicitly lay out the examiner's journey from facts to a conclusion." *Monzingo v. Shinseki*, 26 Vet.App. 97, 106 (2012) (holding that a medical examination report must be read as a whole and does not require that it "explicitly lay out the examiner's journey rom the facts to a conclusion"); *see also Nieves-Rodriguez v. Peake*., 22 Vet.App. 295, 301 (2008) ("[A] medical examination report must contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two"). Whether a medical examination is adequate and to the extent to which, if any, it is probative of the

relevant medical questions, are factual determinations that may not be disturbed unless clearly erroneous. *See Nolen v. Gober*, 14 Vet.App. 183, 184 (2000).

The December 2015 examiner reviewed Appellant's claims file, medical history, and provided an opinion regarding Appellant's reported in-service symptoms. *See* [R. at 433-35]. The examiner opined that Appellant's claimed sleep apnea, which was diagnosed in the 2000s, was not related to his military service. [R. at 434]. The examiner explained that Appellant's reported in-service snoring, pauses in his breathing and gasping during sleep, "are not diagnostic of obstructive sleep apnea" and specified that these are not signs or symptoms which studies have found to cause sleep apnea. [R. at 435]. The examiner further noted that "these particular symptoms are sensitive for OSA, but studies have shown poor specificity of these signs and symptoms in diagnosing OSA." *Id*. Despite the examiner's opinion and explanation, Appellant argues that the examiner failed to address whether he "also suffered from snoring, pauses in his breathing, gasping, and sleep apnea during his service." [AB at 9-10]. Appellant, however, ignores that the examiner acknowledged the reports that he snored, had pauses in his breathing, and gasping during his active duty service. [R. at 435]. Further, Appellant discounts the examiner's determination that he was not diagnosed with sleep apnea until the early 2000s, over a decade after his separation from active duty service, and that the record showed no chronicity of the condition or treatment stemming from any in-service injury, illness, or event. *See* [AB at 9-11]; *see also* [R. at 435].

In his brief, Appellant suggests that the examiner "relie[d] on the distinction between 'sensitivity' and 'specificity' for the proposition that correlation does not equal causation." [AB at 9]. However, this is merely an attempt to render his own unsupported medical opinion. *See Colvin v. Derwinski*, 1 Vet.App. 171, 175 (1991). Just as the Board is prohibited from "refuting the expert medical conclusions in the record with its own unsubstantiated medical conclusions[,]" Appellant too cannot simply usurp the role of the medical examiner and perform a de novo review of the medical literature in order to second-guess the examiner's professional judgment. *See also Colvin*, 1 Vet.App. at 175. Moreover, neither Appellant nor his counsel have the expertise to extrapolate their own independent medical conclusion from the medical evidence of record. *See Kern v. Brown*, 4 Vet.App. 350 (1993) (noting that "appellant's attorney is not qualified to provide an explanation of the significance of the clinical evidence").

Appellant also contends that the examiner improperly relied on the lack of an in-service diagnosis of sleep apnea in concluding that there was no nexus between his current condition and his military service. [AB at 10-11]. He further asserts that the examiner did not adequately explain the significance of the large gap between his time in service and the time of his diagnosis in the earl 2000s. [AB at 11]. While a medical examiner may not rely *solely* on the absence of medical records corroborating an injury to conclude that there is no relationship between an appellant's current disability and his military service, the examiner in this case supported his conclusion with evidence beyond the mere notion that Appellant's

record did not contain a sleep apnea diagnosis. *See* [R. at 435]; *see also Buchanan v. Nicholson*, 451 F.3d 1331, 1336 (Fed. Cir. 2006) (stating that the Board erred in relying on a medical examiner who "ultimately relied not on the objective medical evidence, but rather the absence of such in reaching her opinion that the onset of the appellant's psychiatric symptoms did not occur during service"). Here, the examiner actually acknowledged Appellant's reports that he suffered from snoring, pauses in breathing, and gasping during service, found that that these were not "diagnostic of" sleep apnea and concluded that Appellant did not have sleep apnea during service. [R. at 435]. Moreover, the examiner explained that his in-service symptoms did not establish chronicity of sleep apnea which was not diagnosed until the early 2000s, over a decade post-separation. [R. at 435].

Insofar as Appellant contends that the examiner relied on the absence of evidence to determine the lack of chronicity of sleep apnea, Appellant ignores the evidence of record. *See* [AB at 11]. In fact, the record demonstrates that prior to 2005 Appellant repeatedly denied any history of breathing and sleeping problems, and medical records dated prior to 2005 show no abnormalities in Appellant's nose, sinuses, mouth, and throat. *See, e.g.*, [R. at 332-33], [R. at 330-31], [R. at 367-68], [R. at 369-70]. While an examiner may not rely solely on the absence of objective evidence in reaching his conclusion, the examiner here appropriately relied on the negative evidence of record in reaching his conclusion. *See Forshey v. Principi*, 284 F.3d 1335, 1363 (Fed. Cir. 2002) (en banc) (Mayer, C.J., and

Newman, J., dissenting) ("Negative evidence" is "actual evidence which weighs against a party"); *see also Buchanan*, 451 F.3d at 1336.

In its decision, the Board found that the December 2015 medical opinion adequate and probative because the examiner reviewed Appellant's claims file, including the lay statements, prior medical examinations, and provided a conclusion with cogent rationale. [R. at 6-7]. Considering the above, this finding has plausible basis in the record and thus, should not be disturbed. *See Nolen*, 14 Vet.App. 183 (2000).

Because the December 2015 examiner considered Appellant's medical history and the lay statements of record, provided a clear conclusion supported by rationale including medical literature, the Board's finding that the December 2015 medical opinion was adequate is not clearly erroneous.

### B. The Board Ensured That VA Satisfied Its Duty To Assist In Obtaining All Adequately Identified Private Treatment Records.

Appellant next contends that the Board erred in failing to ensure that VA make reasonable efforts to obtain private treatment records. [AB at 12]. Contrary to Appellant contention, however, the VA obtained all private treatment records adequately identified and relevant to the claim.

The Secretary is required to assist a claimant in obtaining evidence necessary to substantiate his claim for benefits. 38 U.S.C. § 5103A(b)(1); 38 C.F.R. § 3.159(c)(1). This requires that the Secretary make reasonable efforts to obtain all federal and private records adequately identified by the claimant and

relevant to his claim. *See Golz v. Shinseki*, 590 F.3d 1317, 1322 (Fed. Cir. 2010) (clarifying that the duty to assist in obtaining records extends only to relevant records). Where such records are not in the custody of the federal government, reasonable efforts "will generally consist of an initial response to the initial request for the records and, if the records are not received, at least one follow-up request" unless "a response to the initial request indicates that the records sought do not exists or that a follow-up request for the records would be futile." 38 C.F.R. § 3.159(c)(1). The Board's determination that the duty to assist has been satisfied is a finding of fact subject to review under the clearly erroneous standard. *See Nolen v. Gober*, 14 Vet.App. 183, 184 (2000); *Gilbert v. Derwinski*, 1 Vet.App. 49, 52-53 (1990) (a finding of fact is not clearly erroneous if there is a plausible basis for it in the record).

Appellant asserts that the Board failed to comply with its duty to obtain private medical records from the Ochsner Clinic relevant to his claim. [AB at 12]. Initially, it is important to note that VA sought and received medical records from the Ochsner Clinic. *See, e.g.,* [R. at 1220], [R. at 1222-23], [R. at 1254-55], [R. at 1256]. In this case, the record does not demonstrate that Appellant ever identified treatment records from Ochsner Clinic in regard to his claim of service connection for sleep apnea. *See* 38 U.S.C. § 5103A(c)(3); *see also Loving v. Nicholson*, 19 Vet.App. 96, 102 (2005) (providing that "the Secretary shall make reasonable efforts to obtain relevant records . . . that the claimant *adequately identifies*") (emphasis added). Here, Appellant acknowledged that he identified the Ochsner

Clinic only with regard to his claims for service connection for hearing loss and tinnitus. [AB at 12]. A claimant must "provide enough information to identify and locate existing records . . . and in the case of medical treatment records, the condition for which treatment was sought." 38 C.F.R. § 3.159(c)(1)(i). Although Appellant provided authorization for VA to obtain medical records from the Ochsner Clinic, he identified only tinnitus and hearing loss as the conditions for which he received treatment at that facility. [R. at 1281-82].

In his brief, Appellant argues that a May 2005 record from the Ochsner Clinic which included a notation that Appellant experienced "[n]asal [o]bstruction/[s]noring/OSA" provided "constructive notice" of outstanding and potentially relevant medical records. *See* [AB at 12]; *see also* [R. at 1254]. There "must be specific reason to believe that these records may give rise to pertinent information" such as "specific allegations" by the claimant that the unobtained records are relevant. *Golz*, 590 F.3d at 1323. In this case, the record Appellant points to merely demonstrates that Appellant answered in the positive when asked if he has experienced nasal obstruction, snoring, or OSA. [R. at 1254]. This record does not specifically identify sleep apnea as a condition for which Appellant received treatment at the Ochsner Clinic. *See id*. Indeed, the duty to assist "is not a license for a 'fishing expedition' to determine if there *might* be some unspecified information which could possibly support a claim"). *Gober v. Derwinski*, 2 Vet.App. 470, 472 (1992).

Thus, the Board did not fail to fulfil its duty to assist because it did not have an obligation to obtain any additional records from the Ochsner Clinic.

### C. The Court Should Affirm The Board's Decision Because Its Statement Of Reasons Or Bases Adequately Informs Appellant Of The Precise Basis For Its Decision And Facilitates Judicial Review.

Appellant contends that the Board erred in holding him to a higher standard of proof in demonstrating entitlement to the benefit of the doubt, adopting the December 2015 examiner's findings, and failing to weigh the evidence. [AB at 13-17]. The Court should find that the Board properly declined to apply the benefit of the doubt doctrine because it rightfully found that the preponderance of the evidence was against the claim, properly relied on an adequate medical examination, and made all factual determinations necessary to the disposition of the appeal.

It is the Board's responsibility and function to review the evidence and make any and all factual determinations necessary to the disposition of an appeal. These factual determinations may be derived from any number of considerations, to include credibility determinations, physical or documentary evidence, or inferences drawn from other facts. *See Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574, 105 S.Ct. 1504 (1985). As the finder of fact, the Board has wide latitude and discretion in its evaluation of the evidence, and its assignment of probative weight, credibility determinations, interpretations and ultimate conclusions are

subject to review under the clearly erroneous standard. *See* 38 U.S.C. § 7261(a)(4).

"When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant." 38 U.S.C. § 5107(b). Pursuant to section 5107(b), the benefit-of-the-doubt standard is only applicable when the requirement of an "approximate balance of positive and negative evidence" is met. *Ferguson v. Principi*, 273 F.3d 1072, 1076 (Fed. Cir. 2001); *see also Hayes v. Brown*, 5 Vet.App. 60, 70 (1993) (holding that the application of the benefit-of-the-doubt doctrine is triggered only when the evidence is in equipoise). The Board's application of the benefit-of-the-doubt standard is subject to deferential review under the "arbitrary and capricious" standard. *Gilbert*, 1 Vet.App. at 58 (when reviewing the Board's application of the benefit-of-the-doubt doctrine, the Court must determine whether it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law).

Appellant asserts that the Board held him to an impermissible standard of proof to demonstrate entitlement to the benefit of the doubt when it relied on the December 2015 medical examination. [AB at 14-16]. He contends that the Board erred because it accepted the medical examiner's rationale which "relied on a level of acceptance in the scientific community greater than the level of proof required by the benefit of the doubt rule." [AB at 15] (internal quotations omitted). Appellant, however, misunderstands section 5107(b). Specifically, the benefit of the doubt is

a "legal construct to be applied by an adjudicatory body . . ., not by a medical professional when rendering an opinion." *See D'Aries v. Peake*, 22 Vet.App. 97, 106 (2008). Accordingly, the examiner was not under any legal obligation to apply the benefit of the doubt doctrine when rendering his opinion as to the relationship between Appellant's sleep apnea and his military service. *See id*. Here, the Board found that the December 2015 medical examination was the only competent medical opinion and provided an explanation for its reliance on the December 2015 medical opinion and discounted the other opinions, including the lay testimonies provided by Appellant, his spouse, and Mr. Barnes. [R. at 7-8]. Based on its review of the evidence, the Board concluded that the benefit of the doubt did not apply because the preponderance of the evidence weighed against Appellant's claim. [R. at 8]. The Board's finding that the evidence preponderated against the claim is plausible and not clearly erroneous. *See Ortiz v. Principi*, 274 F.3d 1362, 1365 (Fed. Cir. 2001) (noting that when the "Board is persuaded that the preponderant evidence weighs either for or against the veteran's claim, it necessarily has determined that the evidence is not 'nearly equal' or 'too close to call,' and that the benefit of the doubt rule therefore has no application").

Appellant next asserts that the Board improperly relied on the gap in time between his service and his diagnosis of sleep apnea because it did not discuss the "impact of the lay evidence indicating that he suffered from continuous symptoms following his service." [AB at 16]. He also argues that the Board failed to weigh the lay statements of record and determine "whether those statement[s]

made it more likely than not that [he] suffered from sleep apnea due to his service." *Id*. In its decision, the Board considered all of the lay statements provided by Appellant, his spouse, and Mr. Barnes and determined that these statements were not probative as to the issue of whether Appellant suffered from sleep apnea due to service as none of them had the medical expertise to make such a determination. [R. at 7-8]. Thus, although they were competent to describe symptoms, the Board found that their statements relating the symptoms to a diagnosis of sleep apnea were not competent, which is a finding well within the Board's discretion. [R. at 7-8]; *see also* 38 U.S.C. § 7261(a)(4).

Regarding the Board's consideration of the time lapse between Appellant's service and his diagnosis of sleep apnea, it appropriately provided a factual basis for its finding that entitlement to service connection for sleep apnea was not warranted. *See* [R. at 5-8]. Notably, the Board explained that Appellant's service treatment records were devoid of any complaints of or treatment for trouble sleeping or breathing problems and that the only competent medical evidence found that his sleep apnea was not related to his military. [R. at 7]. Indeed, the record reflects that Appellant explicitly denied any issues with breathing or sleeping while he was in service. *See, e.g.,* [R. at 328-29 (August 1986 Report of Medical History)], [R. at 332-33 (September 1990 Report of Medical History)], [R. at 330-31 (September 1990 Report of Medical Examination)], [R. at 356-57 (May 1988 Report of Medical History)]. To the extent that Appellant now contends that he did not report any such issues during active duty service out of fear that he would be

removed from his pending OCS class date, this does not explain his continued denial of such symptoms after his commission as an officer in the Army and after his separation from active duty service. *See* [AB at 2]; *see also Anderson*, 470 U.S. at 574 (holding that the Board may derive factual determinations from any number of considerations including inferences drawn from other facts). Indeed, in September 1993, three years after his separation from active duty, Appellant reported that he was in good health and denied any issues with breathing and sleeping. [R. at 369-70].

Considering the above, the Board provided an adequate statement of reasons or bases for its decision which sufficiently informs Appellant of the precise basis for its decision and which facilitates judicial review.

## V. CONCLUSION

Based upon the foregoing, the Secretary respectfully submits that the Court affirm the Board's October 12, 2019, decision denying entitlement to service connection for sleep apnea.

Respectfully submitted,

**WILLIAM A. HUDSON, JR.**
Acting General Counsel

**MARY ANN FLYNN**
Chief Counsel

*/s/ Christopher W. Wallace*
**CHRISTOPHER W. WALLACE**
Deputy Chief Counsel

*/s/ Anna M. Castillo*
**ANNA M. CASTILLO**
Appellate Attorney
Office of the General Counsel (027G)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420
(202) 632-6133
anna.castillo50@va.gov

Attorneys for Appellee Secretary
of Veterans Affairs