

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 18-4746

DOROTHY M. SEGUI,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before BARTLEY, *Chief Judge*, and PIETSCH and ALLEN, *Judges*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

Appellant challenges a May 10, 2018, Board decision that denied an earlier effective date for her TDIU benefits. This matter is scheduled for oral argument on February 11, 2020.

Appellant moves for clarification of the issues the parties should address at oral argument; the Secretary does not oppose appellant's motion. The Court will grant the motion. Generally, the parties should be prepared to discuss at oral argument all issues raised in their briefs. And, although it is impossible to predict all avenues of inquiry the Court will pursue during oral argument, the parties should be prepared to address specifically the following matters:

- Whether the Board must first determine whether evidence constitutes "cogent evidence of unemployability" before finding that the evidence does not establish entitlement to TDIU on the merits. In other words, does the Board err when it ignores the question about whether evidence is "cogent evidence of unemployability" and goes straight to decide whether the evidence establishes entitlement to TDIU?
- What constitutes "cogent evidence of unemployability?" In this case, is the one letter to which appellant points sufficient to constitute "cogent evidence of unemployability?"

For both issues listed above, the parties should be prepared to address the applicability of *Comer v. Peake*, 552 F.3d 1362 (Fed. Cir. 2009) and its progeny.

Upon consideration of the foregoing, it is

ORDERED that appellant's motion for clarification of issues for oral argument is granted and it is further

ORDERED that the parties be prepared to address at oral argument all matters raised in their briefs, as well as the specific issues noted above.

DATED: December 19, 2019

PER CURIAM.

Copies to:

Christopher F. Attig, Esq.

VA General Counsel (027)