BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

WASHINGTON, DC 20038

Date: October 3, 2019 [redacted]

ROGER N. YOUNG
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NEPTUNE, NJ 07753
USA

Dear Appellant:

The Board of Veterans' Appeals (Board) has made a decision in your appeal, and a copy is enclosed.

If your decision contains a	*What happens next*
Grant	The Department of Veterans Affairs (VA) will be contacting you regarding the next steps, which may include issuing payment. Please refer to VA Form 4597, which is attached to this decision, for additional options.
Remand	Additional development is needed. VA will be contacting you regarding the next steps.
Denial or Dismissal	Please refer to VA Form 4597, which is attached to this decision, for your options.

If you have any questions, please contact your representative, if you have one, or check the status of your appeal at http://www.vets.gov.

Sincerely yours,

K. Osborne
Deputy Vice Chairman

Enclosures (1)
CC: Disabled American Veterans

BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
ROGER N. YOUNG
Represented by
Disabled American Veterans

[redacted]
Docket No. 09-33 589

DATE: October 3, 2019

ORDER

Entitlement to service connection for a low back disability, to include as secondary to a knee disability, is denied.

Entitlement to service connection for a left knee disability is denied.

Entitlement to service connection for a right knee disability is denied.

Entitlement to an initial evaluation in excess of 30 percent for posttraumatic stress disorder (PTSD), prior to January 27, 2010; in excess of 50 percent from that date to December 15, 2011, exclusive of the period for which the Veteran received a temporary total evaluation; and in excess of 70 percent, from December 15, 2011, is denied.

REMANDED

Entitlement to service connection for prostate enlargement is remanded.

Entitlement to service connection for bilateral hearing loss is remanded.

Entitlement to service connection for hypertension, to include as secondary to PTSD, is remanded.

Entitlement to service connection for a skin disorder, to include malignant neoplasms of the skin, is remanded.

Entitlement to a total disability rating on the basis of individual unemployability due to service-connected disabilities (TDIU) for the period prior to December 15, 2011, is remanded.

FINDINGS OF FACT

1. The Veteran's low back disability is not related to an in-service injury or disease, and the Veteran is not in receipt of service connected benefits for knee disabilities.

2. The preponderance of the evidence is against finding that left knee disability began during active service, or is otherwise related to an in-service injury or disease.

3. The preponderance of the evidence is against finding that right knee disability began during active service, or is otherwise related to an in-service injury or disease.

4. The severity, frequency, and duration of the Veteran's PTSD symptoms prior to January 27, 2010, did not more closely approximate occupational and social impairment with reduced reliability and productivity.

5. The severity, frequency, and duration of the Veteran's PTSD symptoms beginning January 27, 2010, to prior to December 15, 2011, excluding the period during which the Veteran was in receipt of a total evaluation, did not more closely approximate occupational and social impairment with deficiencies in most areas.

6. The severity, frequency, and duration of the Veteran's PTSD symptoms during the period beginning December 15, 2011, did not more closely approximate total occupational and social impairment.

CONCLUSIONS OF LAW

1. The criteria for service connection for low back disability due to service or knee disability are not met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303, 3.310.

2. The criteria for service connection for left knee disability are not met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303.

3. The criteria for service connection for right knee disability are not met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303.

4. The criteria for entitlement to an initial evaluation in excess of 30 percent for PTSD, prior to January 27, 2010; in excess of 50 percent from that date to December 15, 2011, exclusive of the period for which the Veteran received a temporary total evaluation; and in excess of 70 percent, from December 15, 2011, have not been met. 38 U.S.C. §§ 1155, 5107; 38 C.F.R. §§ 4.1, 4.3, 4.7, 4.126, 4.130, Diagnostic Code 9411.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from August 1963 to August 1966.

The claims were previously before the Board in April 2015 when they were remanded for further development. There has been substantial compliance with the remand in connection with claims decided here and the Board will proceed with adjudication. *Stegall v. West*, 11 Vet. App. 268 (1998).

SERVICE CONNECTION

Service connection may be granted for disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. § 3.303. The three-element test for service connection requires evidence of: (1) a current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the current disability and the in-

service disease or injury. *Shedden v. Principi*, 381 F.3d 1163, 1166 -67 (Fed. Cir. 2004).

1. Entitlement to service connection for a low back disability, to include as secondary to a knee disability.

2. Entitlement to service connection for a left knee disability.

3. Entitlement to service connection for a right knee disability.

The Veteran underwent a left partial nephrectomy at VA in January 2009. He has subsequently been granted compensation benefits under 38 U.S.C. § 1151 for facet joint arthropathy (claimed as back pain), as a result of that VA treatment. *See* July 2014 rating decision. The current claim is for a back disability that he contends is related to injures in service.

The Veteran has been diagnosed with back and knee disabilities. *See* April 2016 and November 2018 VA examinations.

The question before the Board is whether any currently diagnosed back or knee disability is related to service. The Board concludes that the preponderance of the evidence is against finding that the currently diagnosed back (other than the already compensated facet joint arthropathy), right or left knee disabilities began during active service, or are otherwise related to an in-service injury, event, or disease.

A July 1963 enlistment examination noted no pertinent defects or diagnoses. A service treatment record dated in May 1966 reveals complaints of low back pain. On the Report of Medical History at separation from service the Veteran answered no for recurrent back pain and "trick" or locked knee. Upon the Report of Medical Examination at separation from service, there were no defects or diagnoses related to the back or knees.

Post-service treatment records show diagnoses of moderate predominantly osteophytic degenerative changes of the spine as well as multilevel degenerative spondylosis. *See, e.g.*, April 2009 and May 2009 Imaging Notes.

In October 2009 and April 2012 treatment notes the Veteran reported that he did not have back pain prior to his January 2009 kidney surgery.

In a January 2010 physical therapy note the Veteran was reported to have exacerbation of chronic low back pain status post motor vehicle collision. There was bilateral tight lumbar musculature and mechanical factors including use of crutches and avoidance of left weight bearing due to knee pain.

In a December 2010 VA treatment note the Veteran was noted to have a left knee injury in service in 1964.

A June 2012 VA back examination conducted in connection with the 1151 claim, noted a diagnosis of facet joint arthropathy in February 2011. The examiner reviewed the Veteran's medical history, including his reports of no significant back pain prior to January 2009. The examiner related the current diagnosis to the January 2009 surgery. There was no consideration of whether there was a separately diagnosed back disability.

At a January 2015 hearing before the undersigned, the Veteran reported that he had back pain in service and that his back continued to bother him from that time. The Veteran also reported that his knee disabilities are related to jumping off of machines in service.

Pursuant to the Board remand, the Veteran was afforded a VA back examination in April 2016 which noted diagnoses of degenerative arthritis and spinal stenosis. The examiner noted the Veteran's report of back pain in service as a result of heavy lifting and an increase in pain as a result of the nephrectomy. The examiner related the current back complaints to the natural aging process and the Veteran's body habitus.

The Veteran was afforded VA examinations in November 2018 by the same examiner who conducted the April 2016 examination. The examiner noted bilateral knee arthritis, diagnosed in 2018. For the back, the examiner repeated the negative nexus opinion offered previously, with the additional comment that any injuries in service were minor, soft tissue injuries which resolved and could not cause any chronic conditions. The examiner offered the knee opinion in April

2019, concluding that the currently diagnosed knee arthritis was due to age and daily living, no severe or major knee injuries "in service that would cause [arthritis]."

The Board concludes that service connection is not warranted for a back disability as related to service. Although the Veteran was treated for a complaint of back pain in service, the preponderance of the competent evidence is against a finding that any current back disability is related to his active service. The Board has considered the Veteran's reports that that he injured his back in service and that his back problems continued from service; however, that is inconsistent with other statements in the record. On examination at separation from service, there were no back complaints noted and the Veteran answered "no" to having back pain. Post-service medical records in connection with the 1151 claim include the Veteran's statements that he did not have any back pain or problems prior to his left nephrectomy. The April 2016 and November 2018 opinions that the Veteran's back disability was less likely than not related to his active service are more probative as that examiner considered the Veteran's history and complaints. The examiner concluded that the back condition was due to natural aging process and body habitus, in part because of the Veteran's statements that back pain began after the 2009 surgery and that any injuries in service were minor, soft tissue injuries which resolved and could not cause any chronic conditions. As the preponderance of the evidence is against a finding that the Veteran's back disability was incurred in or is related to his active service, service connection is denied.

Finally, as the Board denies entitlement to service connection for knee disabilities below, entitlement to service connection for a back disability as secondary to knee disability is not for consideration.

Entitlement to service connection for left and right knee disabilities is not warranted. The Veteran has a current diagnosis of left and right knee disabilities. Although a VA treatment record indicates a left knee injury in service in 1964 and the Veteran has reported that he injured his knees jumping off of machines in service, service treatment records do not reveal knee complaints. Upon separation from service the Veteran did not report knee conditions and none were identified upon examination. The Board finds the contemporaneous reports of a lack of knee disabilities on examination at separation from service and the Veteran's answer

"no" to having knee problems on the related medical history to be more probative that his reports knee pain since an in-service injury. The Board finds the VA examiner's negative nexus opinion more probative as it was based on a review of the Veteran's complete history. The examiner related the current diagnoses to the Veteran's age and daily living and that there were no severe or major knee injuries in service that would cause degenerative joint disease/arthritis. As the preponderance of the evidence is against a finding that the Veteran has left and right knee disabilities due to or aggravated by his active service, service connection for left and right knee disabilities is denied.

HIGHER EVALUATION

4. Entitlement to an initial evaluation in excess of 30 percent for PTSD, prior to January 27, 2010; in excess of 50 percent from that date to December 15, 2011, exclusive of the period for which the Veteran received a temporary total evaluation; and in excess of 70 percent, from December 15, 2011.

The Veteran contends that his PTSD is more severe than contemplated by his current evaluation.

Ratings for service-connected disabilities are determined by comparing the veteran's symptoms with criteria listed in VA's Schedule for Rating Disabilities, which is based, as far as practically can be determined, on average impairment in earning capacity. Separate diagnostic codes identify the various disabilities. 38 C.F.R. Part 4. When rating a service-connected disability, the entire history must be borne in mind. *Schafrath v. Derwinski*, 1 Vet. App. 589 (1991). Where there is a question as to which of two ratings shall be applied, the higher rating will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be assigned. 38 C.F.R. § 4.7. The Board will consider entitlement to staged ratings to compensate for times since filing the claim when the disability may have been more severe than at other times during the course of the claim on appeal. *Fenderson v. West*, 12 Vet. App. 119 (1999); *Hart v. Mansfield*, 21 Vet. App. 505 (2007).

Under the General Formula for Mental Disorders (General Formula), the Board must conduct a "holistic analysis" that considers all associated symptoms,

regardless of whether they are listed as criteria. *Bankhead v. Shulkin*, 29 Vet. App. 10, 22 (2017); 38 C.F.R. § 4.130. The Board must determine whether unlisted symptoms are similar in severity, frequency, and duration to the listed symptoms associated with specific disability percentages. Then, the Board must determine whether the associated symptoms, both listed and unlisted, caused the level of impairment required for a higher disability rating. *Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 114-118 (Fed. Cir. 2013).

The issue in this appeal is whether the Veteran's associated symptoms caused the level of impairment required for a disability rating in excess of 30 percent, for the period prior to January 27, 2010; in excess of 50 percent from that date to December 15, 2011, exclusive of the period for which the Veteran received a temporary total evaluation; and in excess of 70 percent, from December 15, 2011 and in excess of 50 percent, after that date. The Board concludes that increased ratings are not warranted for any period on appeal.

A 30 percent rating is assigned when symptoms such as depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, or mild memory loss (such as forgetting names, directions, or recent events), cause occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and normal conversation). 38 C.F.R. § 4.130, Diagnostic Code 9411.

A 50 percent rating is assigned when symptoms such as flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; or difficulty in establishing and maintaining effective work and social relationships cause occupational and social impairment with reduced reliability and productivity. *Id.*

A 70 percent rating is assigned when symptoms such as suicidal ideation; obsessional rituals which interfere with routine activities; intermittently illogical, obscure, or irrelevant speech; near-continuous panic or depression affecting the

ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); or inability to establish and maintain effective relationships cause occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood. *Id*.

A 100 percent rating is assigned when symptoms such as gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; or memory loss for names of close relatives, own occupation or own name cause total occupational and social impairment. *Id*.

In a September 2010 rating decision, service connection was granted and an initial 30 percent rating assigned for PTSD, effective May 11, 2009.

In February 2009 the Veteran rated his depression as 4 to 5 out of 10 and denied ever thinking of suicide due to moral beliefs. He believed that he suffered from claustrophobia because he did not like crowds and must sleep with the door and window open. In April 2009 the Veteran complained of nervousness in closed spaces. His supportive marriage had been helpful. In May 2009 the Veteran reported that he has had symptoms of PTSD since his time in service but that all these years he had handled it himself. In June 2009 the Veteran was "very down." He had had "fleeting" suicidal ideation. He reported poor sleep. He had poor appetite. He reported feeling irritable. In July 2009 the Veteran was more distressed. Despite marital issues, the couple had positive times.

Prior to January 27, 2010, the Veteran's symptoms of PTSD do not warrant an evaluation in excess of 30 percent disabling. Although there is a single notation of a fleeting suicidal ideation and notations of mood disturbance, the Veteran's PTSD did not manifest panic attacks once a week or more, impaired judgment, or impaired abstract thinking. During the period, the Veteran was married and, although he had marital issues, the couple had positive times. During that period

the totality of the Veteran's symptoms of PTSD do rise to the severity contemplated by an evaluation in excess of 30 percent disabling and, therefore, entitlement to an evaluation in excess of 30 percent for the period prior to January 27, 2010, is denied.

Effective January 27, 2010, the rating for PTSD was 50 percent.

The Veteran was afforded a VA examination in August 2010. The Veteran had nightmares about once a week. He endorsed panic attack about once per month. He avoided crowds, parties, and holidays that involved fireworks or loud noises. He reported hypervigilance and did not like people sitting behind him. He checked the locks in his home 2 to 3 times before going to bed. He slept about 5 hours on average but his sleep was interrupted. He felt irritable and was easily startled. Memory was relatively good. He reportedly lost focus easily and needed to write things down to truly remember them and had gotten lost in thoughts about explosions in Vietnam. He had gone through several jobs due to poor, angry interaction with others, and they cost him his first marriage. Mood was generally down and had worsened in the past years. He had altercations at work. He had a good relationship with his sons. He was married for the second time and continued to have problems with his marriage due to his temper. The Veteran was alert and oriented times three, and cooperative. His mood was depressed and anxious with constricted affect. He was in no apparent distress. Thought processes were coherent and linear. Thought content was depressed and anxious but not bizarre. Speech was normal and eye contact was sustained. There were no perceptual disturbances. Auditory or visual hallucinations, delusions, or homicidal ideation were absent. The Veteran reported suicidal ideation without intent to harm himself. He had fair insight, impulse control, and judgment. Memory was generally intact with complaints of mild concentration and memory difficulties.

In October 2010 a friend of the Veteran reported that the Veteran had a history of anger and rage that erupted in a moment of challenge. The friend reported that the Veteran had called him crying, confused, and riddled with anxiety.

In November 2010 the Veteran endorsed intrusive thoughts and recollections. He had nightmares/flashbacks 2 to 3 times a week. He endorsed avoidant symptoms with restricted range of affect but did not have a sense of foreshortened future or

feelings of detachment. He was able to recall past events and participated in significant activities. He slept 4 hours. He endorsed being started and hypervigilant. He had anger issues and difficulty concentrating. He had feelings of depression and had a depressed mood most days. He had feelings of worthlessness, loss of energy, and anhedonia. The Veteran denied changes in appetite, feelings of guilt, and recurrent thoughts of death. He denied symptoms of mania. He did not endorse any suicidal, homicidal, or paranoid ideation. He denied anxiety, panic attacks, head trauma, and rituals.

He had fair hygiene, no mannerisms or tics. He had good eye contact, was calm and cooperative. Speech was normal and mood was depressed. Affect was constricted in quality. Thought process was linear and coherent. Thought content was significant for no delusions. There were no suicidal or homicidal thoughts. He had no phobias, obsessions, or compulsions. He denied hallucinations. He was alert and oriented times three. Memory, attention, and concentration were intact. He had fair impulse control, insight, and judgment.

In December 2010 the Veteran complained of depression and insomnia. He was having nightmares 2 to 3 times a week. He has felt hopeless about ever getting better from a kidney operation. He indicated that he thought about end of life, a lot more last year than this year. He was having increasing arguments with his wife and sons. The Veteran had poor eye contact, was calm and cooperative, had normal speech, depressed mood, dysphoric affect, linear thought process, denied suicidal ideation, and no delusions were noted. He was alert and oriented times three. Insight and judgment were fair. Impulse control was intact.

In February 2011 the Veteran was having nightmares and flashbacks. He reported feeling depressed and anxious. He had anger management problems. He denied thoughts of hurting himself or others. He denied psychotic symptoms. The Veteran appeared his stated age, was fairly groomed, and was alert and oriented times three. He was cooperative, had fair eye contact, depressed mood, appropriate affect, and congruent mood. Speech was clear and goal directed. He denied suicidal and homicidal ideation. There were no auditory or visual hallucinations. No delusions were elicited. Insight and judgment were fair.

In a treatment note dated in March 2011 the Veteran was fairly groomed, calm and cooperative, and his eye contact was fair. Speech was normal and mood was fine. Affect was appropriate and his thought process was logical and goal directed. There was no suicidal or homicidal ideation and there were no hallucinations or delusions. Insight and judgment were fair.

In March 2011 the Veteran was afforded an examination. The Veteran reported that he no longer went to church and that he isolated himself more. He becomes angry and irritated with other people. He predominantly stayed silent and his social interactions were reduced. He was thinking of leaving his wife to isolate himself in order to avoid conflictual situations. He reported that he was with his wife for 2 years and deteriorated during that time period. He reported no social connections and was only comfortable around other Veterans. He stated that his mood was generally down for many years but had worsened in the past few years, particularly since giving up his business. At that time he had thought of driving his car into a truck but denied intent to act on this or to hurt himself. He did not have similar thoughts at the time of the examination. He went through a period of multiple days when he stopped bathing. He avoided situations where he thought that he might be exposed to loud or unexpected noises. He was hypervigilant. He slept for 2 to 3 hours at a time, sometimes for only 1 hour. He got about 5 hours of interrupted sleep. The Veteran denied any memory or attention problems. He was irritable and startled easily and overreacts with irritability. The Veteran was alert and oriented. He was cooperative and pleasant, mood was okay, and he felt his affect was anxious. His thought process was logical and coherent. Thought content was depressed. Speech was normal. He had good eye contact. He denied hallucinations. There was no evidence of any delusions. He denied any homicidal and suicidal ideation. But he had periods where he would not have minded if he did not wake up. He had no intent or plan to harm himself. He had good insight and fair judgment and impulse control. Memory appeared to be generally intact.

In June 2011 the Veteran was fairly groomed. He was calm and cooperative. Psychomotor activities were normal and eye contact was fair. Speech was normal. Mood was depressed and affect was appropriate. Thought processes were logical and goal directed. There was no suicidal or homicidal ideation. There were no hallucinations or delusions. Insight and judgment were fair.

In July 2011 the Veteran denied suicidal ideation.

In September 2011 the Veteran reported thoughts of driving his car into a building or a truck but that he had no plan to act on the thoughts. It was noted that the Veteran continued to have some suicidal ideation but that it had been less intense over the prior 3 or 4 days.

From September 2011 to November 2011 the Veteran was admitted to a residential PTSD program. The Veteran was noted to demonstrate significant re-experiencing, avoidance, and hyper-arousal PTSD symptoms. The Veteran experienced a great deal of anxiety, nightmares, numbing, difficulties with focus and concentration, poor sleep, anger, isolation, hypervigilance, survivor guilt and depression. He was in his second marriage and reported relational problems due to his emotional distance, attempts to control and need to be right. He reported long-standing history of problems with bosses and keeping jobs due to difficulties with authorities.

The Veteran is in receipt of a temporary 100 percent evaluation from September 29, 2011 to December 1, 2011.

During the period beginning January 27, 2010, to prior to December 15, 2011, excluding the period during which the Veteran was in receipt of a total evaluation, the Veteran's PTSD did not manifest symptoms warranting an evaluation in excess of 50 percent disabling. It is acknowledged that in August 2010 and September 2011 the Veteran indicated suicidal ideation, which is contemplated by the 70 percent criteria and is similar to persistent danger of self-harm, which is contemplated by the 100 percent criteria. *Bankhead v. Shulkin*, 29 Vet. App. 10 (2017). However, the severity, frequency, and duration of the Veteran's suicidal ideation had not risen to the level contemplated by the 70 percent or 100 percent disability ratings. The Veteran reported experiencing passive suicidal ideation in early March 2008, however the suicidal ideation was resolved prior to the end of March 2008. The Veteran also reported that he had not had suicidal ideation since 1991 during the August 2018 VA examination. During the remainder of the period, the Veteran denied suicidal ideation, and beginning September 2011, the Veteran was awarded a temporary 100 percent evaluation. There is no indication of illogical, obscure, or irrelevant speech, near-continuous panic or depression

affecting the ability to function, impaired impulse control, spatial disorientation, or neglect of personal appearance and hygiene. During the period, although the Veteran reported that he isolated himself more and more, the Veteran was noted to be married and to have a relationship with his sons. During the period of January 27, 2010, to prior to December 15, 2011, excluding the period during which the Veteran's was in receipt of a temporary total evaluation, the totality of the Veteran's symptoms of PTSD do rise to the severity contemplated by an evaluation in excess of 50 percent disabling and, therefore, as the preponderance of the evidence is against a higher evaluation, an evaluation in excess of 50 percent for this period is denied.

In December 2011 the Veteran had a mildly constricted affect. Mood was better and speech was normal. Thought process was goal directed and coherent. Thought content showed no suicidal or homicidal ideation or hallucinations. Insight and judgment were fair.

In January 2012 affect was appropriate to mood. Speech was normal and thought process was goal directed and coherent. Thought content showed no suicidal or homicidal ideation or hallucinations. Insight and judgment were fair.

In February 2012 the Veteran denied suicidal and homicidal ideation as well as audio and visual hallucinations. There was no evidence of extreme anxiety, despondency, or hopelessness. There are no reports manic/psychotic symptoms at the time.

The Veteran was afforded a VA examination in March 2012. The examiner found that the Veteran had occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking, and/or mood, but not total occupational and social impairment. The Veteran was married but was noted to be living with a friend. The Veteran's wife accompanied the Veteran to the examination. She noted that the Veteran had significant problems with anger, depression, avolition, and severe social isolation, to the point where the Veteran was unable to attend most activities, and when he does try to do so, leaves early.

In June 2012 the Veteran was affect appropriate, mood was depressed, speech was normal, and thought process was goal directed. He was coherent. There was no

suicidal and homicidal ideation and no audio or visual hallucinations. Insight and judgment were fair.

Upon examination in August 2012 the Veteran was again noted to have occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking, and/or mood, but not total occupational and social impairment. The Veteran was noted to be married to his second wife for 4 years. He was estranged from 2 of his 3 sons and maintained sporadic contact with his 4 surviving siblings.

In October 2012, December 2012, January 2013, February 2013, March 2013, May 2013, June 2013, July 2013, August 2013, October 2013 and November 2013 the Veteran was casually dressed, had good eye contact, and was calm and cooperative. He had better impulse control. Mood varied among alright, "the same," depressed, and "still struggling." He had full and appropriate affect, regular speech, and linear and coherent thought process. There were no hallucinations. There was no suicidal or homicidal ideation, plan or intent. There were no delusions. Memory was grossly intact. He was oriented to person, place, and time. Insight and judgment were fair.

In August 2013 the Veteran was calm and cooperative. He had an argument with his wife and did not talk with her. He planned to take trip to visit relatives but did not go due to a friend that got sick. Continued to report occasional PTSD symptoms like disturbed sleep, nightmares, flashbacks, hypervigilance, and avoidance. He stayed busy during daytime working with DAV. The Veteran was casually dressed, had good eye contact, and was calm and cooperative. He had better impulse control, depressed mood, full and appropriate affect, regular speech, and linear and coherent thought process. There were no hallucinations. There was no suicidal or homicidal ideation, plan or intent. There were no delusions. Memory was grossly intact. He was oriented to person, place, and time. Insight and judgment were fair.

In March 2014 the Veteran was more depressed and endorsed symptoms of depression. He had poor concentration and isolation. He needed to be by himself when he was not doing well and felt bad about his wife. He had a poor relationship with his three sons. They never agreed with him getting remarried. He reached out

to his older son. The Veteran was casually dressed, had good eye contact, and was calm and cooperative. He had better impulse control, depressed mood, sad and constricted affect, regular speech, and linear and coherent thought process. There were no hallucinations. There was no suicidal or homicidal ideation, plan or intent. There were no delusions. Memory was grossly intact. He was oriented to person, place, and time. Insight and judgment were fair.

In April 2014 the Veteran reported that he and his wife had just returned from a trip to visit his wife's friend and his sister.

In January 2014, April 2014, June 2014, August 2014, October 2014, December 2014, February 2015, May 2015, July 2015, September 2015, March 2016, August 2016, October 2016, December 2016, and September 2017 the Veteran was casually dressed, had good eye contact, and was calm and cooperative. He had better impulse control. Mood varied among "still struggle," alright, so-so, "still struggling," "maintaining," "same," and "blessed," and affect was sad and constricted to "I am in pain" to full and appropriate. Speech was regular and thought process was linear and coherent. There were no hallucinations. There was no suicidal or homicidal ideation, plan or intent. There were no delusions. Memory was grossly intact. He was oriented to person, place, and time. Insight and judgment were fair.

The Veteran was afforded a VA examination in September 2014. The examiner reported that the Veteran had occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking, and/or mood. He continued to reside with his second wife and indicated that their relationship had its ups and downs due to his attitude. He had a strained relationship with his three sons. He had infrequent contact with one son but had not talked with his other children in years. He did not engage in any social or recreational activities; however, indicated that he typically drove his wife to work and then spent his day at a local autobody shop that he had friends at. He met with his local DAV group and they helped each other out. He traveled once a month with his wife to visit one of her friends.

In June 2015 the Veteran was noted to experience chronic irritability and anger, which leads to frequent interpersonal conflicts, and he relies on isolation and avoidance as his main strategy for anger management.

Statements of the Veteran's wife associated with the claims file indicate that she takes care of the Veteran. *See, e.g.*, September 2015.

The Veteran was afforded a VA examination in November 2018. The Veteran was noted to have occupational and social impairment with reduced reliability and productivity. The Veteran reported that he and his wife get along. His wife noted that the Veteran had a short-temper and expressed anger and rage. His relationship with 2 of his sons was not good due to his problems. He saw his third son now and then. The Veteran had two stepsons and he described his relationships with them as somewhat good, although he did not see them much. He saw his grandchildren now and then. He had a relationship with one of his siblings and reported mutual problems with the rest of them. He had one friend and described himself as a loner. He socialized less over the prior 5 years than he had in the past. The Veteran's symptoms were noted to be depressed mood, near-continuous panic or depression affecting the ability to function independently, appropriately and effectively, chronic sleep impairment, mild memory loss, such as forgetting names, directions or recent events, flattened affect, impaired judgment, disturbances of motivation and mood, difficulty in establishing and maintaining effective work and social relationships, and difficulty in adapting to stressful circumstances, including work or a work like setting. The Veteran was open and cooperative, speech was normal, and thought processes were clear, coherent, and goal directed. There was no evidence of delusions. Hallucinations were denied. The Veteran appeared to be mildly depressed and irritable. Affect was flat. Suicidal and homicidal ideation were convincingly denied. Sleep disturbance was reported with delayed onset, frequent awakening, and early morning awakenings. Appetite disturbance was denied. Short-term memory impairment with delayed recall was evident. Judgment and insight were fair.

During the period beginning December 15, 2011, the Veteran's PTSD did not manifest total occupational and social impairment and, therefore, entitlement to an evaluation in excess of 70 percent is not warranted. During this period the Veteran was married and took trips with his wife. He had some relationship with other

family, spent time at a local autobody shop, and met with a group at DAV. Although he had difficult relationships, the Veteran was not totally socially impaired. There is no indication he was unable to function both mentally and behaviorally on a daily basis, causing total occupational and social impairment or that his symptoms caused him to be in danger of physical harm to himself or others. There was no evidence of gross impairment of his cognitive functions and behavior. As the preponderance of the evidence is against a finding that the Veteran was totally socially impaired beginning December 15, 2011, entitlement to a higher evaluation is warranted.

REASONS FOR REMAND

The Veteran receives consistent treatment from VA. On remand, attempts must be made to obtain and associate with the claims file VA treatment records regarding the Veteran dated since April 2019. *See* 38 C.F.R. § 3.195.

1. Entitlement to service connection for prostate enlargement is remanded.

VA medical opinions from November 2018 and February 2019 are inadequate. Neither examination addressed notations in the service treatment records that show treatment for a urethral discharge in June 1964. Remand is necessary for an adequate medical opinion that includes consideration of the treatment in service.

2. Entitlement to service connection for bilateral hearing loss is remanded.

The Veteran was afforded a VA examination in August 2009. Testing revealed bilateral hearing loss pursuant to 38 C.F.R. § 3.385.

Pursuant to a Board remand the Veteran was afforded a VA examination in November 2018 which showed hearing loss for VA purposes in the right ear only. The examiner provided a negative nexus opinion, essentially because there was no hearing loss noted in service and no significant threshold shifts noted when in-service results were compared. The opinion is inadequate because the examiner did not make any reference to the Veteran's reports of in-service acoustic trauma or

indicate why the conceded noise exposure was not a source of the Veteran's current hearing loss. Remand is necessary to afford the Veteran another VA examination.

3. Entitlement to service connection for hypertension, to include as secondary to PTSD, is remanded.

The November 2018 VA opinion is inadequate. The rationale provided stated that military service and PTSD were not risk factors for hypertension and the examiner provided a discussion of the risk factors. However, in rendering the opinion that the hypertension was not aggravated by the PTSD, the examiner discussed that the blood pressure values for the period from March 2018 to October 2018 showed that the Veteran's hypertension met the therapeutic goals and had not been aggravated by PTSD. The examiner did not indicate the significance of basing the opinion on consideration of reading over only a short period. A new opinion is needed

4. Entitlement to service connection for a skin disorder, to include malignant neoplasms of the skin, is remanded.

The claim was previously considered as separate claims; for malignant neoplasms of the skin and for a skin disorder, but the Board has recharacterized them as one claim, based on the evidence of record.

The November 2018 VA examination obtained is inadequate. On examination, he was noted to have skin tags. The examiner offered a negative nexus opinion, which appears to be based on part on the fact that the Veteran could not accurately say when his skin lesions first began. The examiner noted that the Veteran's service treatment records were silent for any skin disability related to disease, injury or other event. However, the Veteran testified at the January 2015 hearing that when he returned from Vietnam he started having little pimples and bumps on the arms and over time they got worse and that he had been diagnosed with skin tags.

The VA opinion did not consider the Veteran's competent statements that he first noticed the skin problems when he returned from Vietnam. The claim must be remanded to obtain another VA medical opinion.

5. Entitlement to a TDIU for the period prior to December 15, 2011, is remanded.

The TDIU claim is inextricably intertwined with the claims being remanded and adjudication must be deferred.

The matters are REMANDED for the following action:

> 1. Obtain the Veteran's VA treatment records for the period from April 2019 to the present.
>
> 2. After completion of the above, forward copies of all pertinent records to an appropriate VA medical examiner to obtain an addendum opinion regarding the likely etiology of the prostate enlargement. In the event the examiner determines that further examination of the Veteran is necessary, the Veteran should be scheduled for a VA medical examination.
>
> The examiner should provide an opinion as to whether it is at least as likely as not (a 50 percent or greater chance) that the prostate enlargement is related to disease, injury, or other events during the Veteran's service. The examiner should comment upon the Veteran's in-service treatment of urethral discharge. The examiner must explain the conclusions reached.
>
> 3. Arrange for the Veteran to undergo an appropriate VA examination to determine the nature, extent, onset and etiology of any bilateral hearing loss found to be present. Copies of all pertinent records must be made available to the examiner for review. The examiner should comment on the lay statements of record relating to the Veteran's hearing loss, including statements of in-service exposure to loud noise, and opine as to whether it is at least as likely as not (a 50 percent or greater probability) that any

hearing loss found to be present is related to or had its onset during service. The rationale for all opinions expressed should be provided.

4. Forward the copies of all pertinent records to an appropriate VA medical examiner to obtain an addendum opinion regarding the likely etiology of the Veteran's hypertension. In the event the examiner determines that further examination of the Veteran is necessary, the Veteran should be scheduled for a VA medical examination.

The examiner should address the following:

Is it at least as likely as not that the Veteran's service-connected PTSD aggravated (defined as *any* increase in disability) his hypertension?

The rationale for all opinions expressed should be provided.

5. Forward copies of all pertinent records to an appropriate VA medical examiner to obtain an addendum opinion regarding the likely etiology of the Veteran's skin disability. In the event the examiner determines that further examination of the Veteran is necessary, the Veteran should be scheduled for a VA medical examination.

The examiner should address the following:

Is it at least as likely as not that the Veteran's skin disability was incurred in service?

In rendering the opinion, the examiner must consider and discuss as necessary the Veteran's credible statements that he first noticed bumps on his skin when he returned

from Vietnam. The rationale for all opinions expressed should be provided.

6. After the above development, and any additionally indicated development, has been completed, readjudicate the claims, including entitlement to TDIU prior to December 15, 2011.

M.E. LARKIN
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board Robert J. Burriesci, Counsel

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential, and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.

YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. *The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."*

If you are satisfied with the outcome of your appeal, you do not need to do anything. Your local VA office will implement the Board's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- Appeal to the United States Court of Appeals for Veterans Claims (Court)
- File with the Board a motion for reconsideration of this decision
- File with the Board a motion to vacate this decision
- File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- Reopen your claim at the local VA office by submitting new and material evidence.

There is *no* time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. Please note that if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your appeal at the Court because of jurisdictional conflicts. If you file a Notice of Appeal with the Court ***before*** you file a motion with the Board, the Board will not be able to consider your motion without the Court's permission or until your appeal at the Court is resolved.

How long do I have to start my appeal to the court? You have **120 days** from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the Court. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the court. *As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you,* you will have another 120 days from the date the Board decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, *it is your responsibility to make sure that your appeal to the Court is filed on time*. Please note that the 120-day time limit to file a Notice of Appeal with the Court does not include a period of active duty. If your active military service materially affects your ability to file a Notice of Appeal (e.g., due to a combat deployment), you may also be entitled to an additional 90 days after active duty service terminates before the 120-day appeal period (or remainder of the appeal period) begins to run.

How do I appeal to the United States Court of Appeals for Veterans Claims? Send your Notice of Appeal to the Court at:

Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's website on the Internet at: http://www.uscourts.cavc.gov, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal **with the Court**, not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the Board to reconsider any part of this decision by writing a letter to the Board clearly explaining why you believe that the Board committed an obvious error of fact or law, or stating that new and material military service records have been discovered that apply to your appeal. It is important that your letter be as specific as possible. A general statement of dissatisfaction with the Board decision or some other aspect of the VA claims adjudication process will not suffice. If the Board has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Issues not clearly identified will not be considered. Send your letter to:

Litigation Support Branch
Board of Veterans' Appeals
P.O. Box 27063
Washington, DC 20038

CONTINUED ON NEXT PAGE

Remember, the Board places no time limit on filing a motion for reconsideration, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to vacate? You can file a motion asking the Board to vacate any part of this decision by writing a letter to the Board stating why you believe you were denied due process of law during your appeal. *See* 38 C.F.R. 20.904. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address on the previous page for the Litigation Support Branch, at the Board. Remember, the Board places no time limit on filing a motion to vacate, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to revise the Board's decision on the basis of clear and unmistakable error? You can file a motion asking that the Board revise this decision if you believe that the decision is based on "clear and unmistakable error" (CUE). Send this motion to the address on the previous page for the Litigation Support Branch, at the Board. You should be careful when preparing such a motion because it must meet specific requirements, and the Board will not review a final decision on this basis more than once. You should carefully review the Board's Rules of Practice on CUE, 38 C.F.R. 20.1400-20.1411, and *seek help from a qualified representative before filing such a motion.* See discussion on representation below. Remember, the Board places no time limit on filing a CUE review motion, and you can do this at any time.

How do I reopen my claim? You can ask your local VA office to reopen your claim by simply sending them a statement indicating that you want to reopen your claim. However, to be successful in reopening your claim, you must submit new and material evidence to that office. *See* 38 C.F.R. 3.156(a).

Can someone represent me in my appeal? Yes. You can always represent yourself in any claim before VA, including the Board, but you can also appoint someone to represent you. An accredited representative of a recognized service organization may represent you free of charge. VA approves these organizations to help veterans, service members, and dependents prepare their claims and present them to VA. An accredited representative works for the service organization and knows how to prepare and present claims. You can find a listing of these organizations on the Internet at: http://www.va.gov/vso/. You can also choose to be represented by a private attorney or by an "agent." (An agent is a person who is not a lawyer, but is specially accredited by VA.)

If you want someone to represent you before the Court, rather than before the VA, you can get information on how to do so at the Court's website at: http://www.uscourts.cavc.gov. The Court's website provides a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to the represent appellants. You may also request this information by writing directly to the Court. Information about free representation through the Veterans Consortium Pro Bono Program is also available at the Court's website, or at: http://www.vetsprobono.org, mail@vetsprobono.org, or (855) 446-9678.

Do I have to pay an attorney or agent to represent me? An attorney or agent may charge a fee to represent you after a notice of disagreement has been filed with respect to your case, provided that the notice of disagreement was filed on or after June 20, 2007. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636. If the notice of disagreement was filed before June 20, 2007, an attorney or accredited agent may charge fees for services, but only after the Board first issues a final decision in the case, and only if the agent or attorney is hired within one year of the Board's decision. *See* 38 C.F.R. 14.636(c)(2).

The notice of disagreement limitation does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court. VA cannot pay the fees of your attorney or agent, with the exception of payment of fees out of past-due benefits awarded to you on the basis of your claim when provided for in a fee agreement.

Fee for VA home and small business loan cases: An attorney or agent may charge you a reasonable fee for services involving a VA home loan or small business loan. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636(d).

Filing of Fee Agreements: If you hire an attorney or agent to represent you, a copy of any fee agreement must be sent to VA. The fee agreement must clearly specify if VA is to pay the attorney or agent directly out of past-due benefits. See 38 C.F.R. 14.636(g)(2). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the direct-pay fee agreement must be filed with the agency of original jurisdiction within 30 days of its execution. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. See 38 C.F.R. 14.636(g)(3).

The Office of the General Counsel may decide, on its own, to review a fee agreement or expenses charged by your agent or attorney for reasonableness. You can also file a motion requesting such review to the address above for the Office of the General Counsel. See 38 C.F.R. 14.636(i); 14.637(d).