
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.

REPLY BRIEF FOR APPELLANT

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INTRODUCTION

The appellant, Jo L. Haugh, appeals the June 4, 2018 decision of the Board of Veterans' Appeals (Board) that denied entitlement to service connection for post-service hysterectomy as due to her in-service menstrual disorder, other gynecological conditions and urinary impairments. (R. 4-11). On August 30, 2019, Ms. Haugh filed an initial brief (App. Br.). The Secretary filed a responsive brief (Sec. Br.) on December 19, 2020. Pursuant to Vet. App. Rule 28(c), Ms. Haugh maintains the arguments raised in her initial brief and files this Reply brief.

ARGUMENT

I. THE COURT SHOULD REVERSE THE BOARD'S FINDING THAT IT IS THE MEDICAL EXAMINER SUBSTANTIALLY COMPLIED WITH ITS REQUEST FOR AN EXPERT MEDICAL OPINION.

Appellant maintains her contention that the Board's failure to ensure the expert medical opinion complied with the terms of its engagement request constitutes a remandable error. *Stegall v. West*, 11 Vet.App. 268, 271 (1998). Appellant contends that in the same manner the Secretary has a duty to ensure compliance with the terms of a remand order, he also bore the same duty to ensure compliance with the Board's request for an expert medical opinion for reasons outlined in her initial brief. (App. Br. 5-10)

It is generally the accepted principle in this court that substantial compliance does not mean absolute compliance. *Dyment v. West*, 13 Vet.App. 141, 146-47 (1999) However, substantial compliance is not some sort of "get out of jail free card in terms of a failure to comply with the terms of a remand or in

this case a request for an expert medical opinion. *Murrell v. Wilkie* CAVC Docket No. 18-3053 (July 10, 2019) *4 This court has held “that the general legal concept [is] that substantial compliance means actual compliance with essential objectives.” *Missouri Veterans Comm’n v. Peake*, 22 Vet.App. 123, 127 (2008) Here, the Board’s engagement letter stated the essential objectives as “to clarify whether the [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. 172-174) To facilitate accomplishing this objective, the Board deemed it necessary for the examiner to “review the entire record, to include the [Appellant’s] service treatment records, her post service treatment records and furnish opinions with supporting rationale as to whether it is as at least as likely as not that (1) the veteran’s hysterectomy was due to or the result of an in-service gynecological condition and/or treatment...” (R. 173). Contrary to the arguments advanced in the Secretary’s brief, the only way the medical examiner could have substantially complied with the stated objectives of the Board’s engagement letter was for the examiner to actually review the entire record and discuss each gynecological condition and treatment documented in Appellant’s in-service and post-service medical records.

In light of Appellant’s documented in-service and post service medical conditions, the Secretary expended fifteen pages of his brief without so much as scintilla of an affirmative statement conveying how the medical examiner

substantially complied with the Board's stated objectives with respect to **all** of Appellant's documented conditions both during and post service. (Sec. Br. 10-25)

The Secretary contends the medical examiner "performed an exhaustive review of Appellant's service and post-service medical records..." (Sec. Br. 24) Appellant disagrees and reiterates that the examiners opinion does not reflect a complete review of her in-service and post service treatment records given the considerable number of documented medical conditions the examiner failed to even discuss in the absence of any rationale for why such discussion was unnecessary to achieve the stated essential objectives of the Board's engagement letter. (*"Specifically, the examiner's opinion fails to offer any discussion, assessment, analysis or opinion regarding the following gynecological conditions and treatment of record: pap smear showing acute inflammation (R. 692); miscarriage (R. 1003); labial varicose veins (R. 1002); vaginal mucus tear (R. 427-438); bilateral tubal ligation (R. 562); recurrent urinary tract infections (R. 421, 400, 434, 398, 396, 388-389, 373, 372, 370-371, 369 and 440); urinary incontinence (R. 336, 675); urethral symptoms (R. 418); gyn cytology reflecting inflammation with cellular changes (R. 464). As for Appellant's post-service gynecological conditions and treatment, the VA examiner likewise failed to offer any discussion or analysis of the following conditions: fibroids (R. 1562, 1559); menstrual bleeding for six months to a year with bulge symptoms (R. 1121-1122); protrusion of Appellant's bladder into her vaginal wall (cystocele secondary to traction from her uterine prolapse) (R. 1121-*

1122); adenomyosis, benign leiomyomata (fibroid) and anterior fibroid within the endometrium (R. 1323)", App. Br. 9)

CONCLUSION

For the foregoing reasons, and those raised in Appellant's initial brief, she respectfully requests that this Court issue an order vacating the Board's June 4, 2018 decision that denied entitlement to service connection for her post-service hysterectomy as due to her in-service menstrual disorders, other gynecological conditions and urinary impairments.

Respectfully submitted,

February 18, 2020
Date

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