IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

JAMES R. HEALEY, Appellant,	)	
v.	)	Vet.App. No. 18-6970
ROBERT L. WILKIE, Secretary of Veterans Affairs, Appellee.	)	

APPELLANT'S MOTION FOR ORAL ARGUMENT

On April 2, 2020, the Court ordered this case to be decided by a panel. Pursuant to U.S. Court of Appeals for Veterans Claims Rules of Practice and Procedure (U.S. Vet.App. R.) 27 and 34(b), Appellant, Mr. James R. Healey, hereby moves the Court for an order scheduling the matter for oral argument. Appellant believes the Court will be further enlightened by oral argument given the Court's finding that the case is not appropriate for a single judge decision and that one or more of the aspects of the case make it unsuitable for a single judge decision under *Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). *See* U.S. Vet.App. R. 34(b) ("Oral argument normally is not granted on nondispositive matters or matters being decided by a single judge.").

At issue in this case is whether a direct relationship exists between the National Academy of Sciences' Institute of Medicine report entitled *Veterans and Agent Orange: Update 2006* ("NAS Update") and Mr. Healey's claim of service connection for hypertension. In *Euzebio v. Wilkie*, which this Court decided after Mr. Healey filed his

opening brief, this Court held that the constructive possession doctrine requires a claimant to "show a *direct relationship* between [a] document and his or her claim to demonstrate that the document was constructively before the Board, even if the document was generated for and received by VA under a statutory mandate." 31 Vet.App. 394, 401 (2019). The Court defined a "direct relationship" as follows: "The document must bear a closer relationship to the appellant beyond providing general information related to the type of disability on appeal . . . or merely being referenced in other evidence of record or relied upon by appellants in similar cases . . . ." *Id.*

On appeal, Mr. Healey argues that the NAS Update was at least constructively before the Board because it had a "direct relationship" with his appeal. *See* Appellant's Brief (Br.) at 14; Appellant's Reply Br. at 1-4. Specifically, the Board's internal manual—*The Purplebook*—directs the Board to consider the NAS Update when hypertension is claimed as due to herbicide exposure, and the Update specifically links hypertension to herbicide exposure. *See* Appellant's Reply Br. at 2-3. Accordingly, Appellant contends that the Update was constructively before the Board and provided an "indication" that Mr. Healey's hypertension "may be" related to service, and that VA was therefore required to obtain an opinion on whether his hypertension was related to his in-service herbicide exposure. *See* Appellant's Br. at 20; Appellant's Reply Br. at 7.

In his brief, the Secretary argues that the *Euzebio* Court held that an NAS report was not constructively part of the record before the Board because there must

be a "direct relationship" to the claim on appeal. Secretary's Br. at 11. The Secretary avers that "*Euzebio* governs here, so none of the NAS reports were constructively before the Board in October 2018." *Id.*

There is no clear precedent regarding what satisfies the "direct relationship" requirement under *Euzebio* and *Monzingo v. Shinseki*, 26 Vet.App. 97, 102 (2012). Appellant, therefore, believes that resolution of this and other questions presented in this case would be better informed if the Court held oral argument.

WHEREFORE, Appellant respectfully requests that this Court schedule the case for oral argument. Counsel for Appellee has indicated that the Secretary takes no position on this motion and reserves the right to respond.

Respectfully submitted,

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