

US COURT OF APPEALS  
FOR VETERANS CLAIMS

APR 13 2020

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE VETERANS CLAIMS

SAMMIE LEE BROWN  
APPELLANT PRO SE,

v.

VET. APP. NO. 20-0810

ROBERT L. WILKIE  
SECRETARY OF VETERANS AFFAIRS  
APPELLEE.

APPELLANT MOTION TO REMAND

Pursuant to U.S. VET. APP. R 27(a), Appellant, SAMMIE LEE BROWN pro se, NOW MOVES to remand this case VET. APP. NO. 20-0810 for lack of subject matter jurisdiction.

ON JANUARY 30, 2020 Appellant filed a Notice of Appeal with the UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS (COURT). The Appellant sought to appeal a 2019 decision of the BOARD OF VETERANS APPEALS (BOARD) involving VA File NO. 256216855. Based on review of the information contained in the Board determination from evidence in the Administrative decision made by the Veteran Affairs Administrative in reference to VA Claim File NO. 256216855, the issue of entitlement to Service-Connection for residuals of Post Closed head traumatic Brain Injury, to also include an acquired psychiatric disorder, vertigo and Post-Traumatic Stress disorder have been raised by record, but have not been developed by and adjudicated by the Veteran Affairs Regional Office(s) (RO) during Appellant Applied Application of Insanity defense claims, therefore are not before the COURT or adjudicated by the Board this error made by the R.O.'s deprived the Appellant his Federal and State (Constitutional) rights protections to due process and equal access to the Court, to include Appeal process. Therefore this issues should be referred back to the R.O.'s for appropriate action.

BASIS FOR REMAND

There is New and Material evidence presented that have not been considered since the March, 2016 Administrative decision. The new and material evidence has been received by the VA to reopen the above claims

For service-connection related to a motor vehicle accident in January, 1984 during Appellant Active Military Service determined after an investigation that the injuries were incurred in the line of duty and not due to willful misconduct. The new and material evidence referred to includes diagnoses from private clinician reports of psychologists and psychiatrists employed by the STATE OF GEORGIA at both Johnson and Rutledge State Prisons. The private clinical documents that were received by the VA is of such significance that it reviewed and considered this evidence will raise a reasonable possibility of substantiating the Appellant Insanity defense claim for service-connection when considering medical treatment reports during the Appellant Active military Service. The evidence is not associated with the claim folder, as stated will substantiate Appellant claims. The COURT will not find a medical or psychiatric examination or opinion to provide the information needed to fairly adjudicate an "Insanity defense". Munzingo v. Shinseki, 21 Vet. App. 303 (2007); Acevedo v. Shinseki, 25 Vet. App. 286 (2012). Due process clause demands that the VA provide Appellant a medical or psychiatric examination or obtain a medical opinion that is adequate. Barr v. Nicholson, 21 Vet. App. 303 (2007); AK v. Oklahoma, 105 S.Ct. 1087, 38 U.S.C.A. 5108 (West 1991); 38 C.F.R. 3.104(d) (2001); 66 Fed. Reg. 45,620 (Aug 29, 2001); (To be codified as amended at 38 C.F.R. 3.102; 3.156(e); 3.159; 3.326(d)); (provisions of Veterans Claims Assistance Act 2000 and evidence needed to substantiate the claim). The VA R.D.'s Layperson determination are assumptions and not based on direct evidence, the Layperson given testimony were not competent to make a medical diagnosis or render a medical opinion in relation to Appellant mental status involving his medical disorder at the time of the commission of the offense that led to his discharge or to a specific cause. See Espiritu v. Derwinski, 2 Vet. App. 492 (1992).

Service connection may be established for a disability resulting from a personal injury suffered or disease contracted in line of duty, or aggravation of pre-existing injury suffered or disease contracted in the line of duty

38 U.S.C.A. 1110; 38 C.F.R. 3.303. This law provides that service-connection is warranted for a disability of any disease diagnosed after when all evidence, including that pertinent to service, 38 C.F.R. 3.303; Cohen v. Brown, 10 Vet. App. 128 (1997).

Since 1984 there has been a major advancement in medical knowledge of consequences of a traumatic brain injury when the behavior and discipline occurred. The Appellant act leading to his only disciplinary action were related to a medical issue and should not have been considered willful. Appellant challenges the Service department decision of characterize his service as "other than honorable", there is credible lay and medical evidence that have not been reviewed and considered for finding that Appellant action were in part the result of his disease and were a deviation from his <sup>normal</sup> behavior and the norms of this military environment at the time the act was committed. The unauthorized absent as stated is the Appellant only disciplinary action against him should not have been considered persistent. There is a duty to assist still obligated upon the VA in obtaining a medical opinion even though the VA R.O.'s considers the appellant may not qualify for "veteran status" prior to any determination. Gardner 22 Vet. App. At 471-22; See also Brown v. Bolton, 8 Vet. App. 185 (1995). Thus, the only way pursuant to appellant application in his "Insanity Defense" to read the definition of Insane in 38 C.F.R. 3.354(a) in this case is to apply the phrase "due to a disease" to all three circumstances for the regulation. ZANG v. Brown 8 Vet. App. 246 (1995), pursuant to Stuck v. Brown, 9 Vet. App. 145 (1996), this would resolve all the issues related to appellant's "Insanity Defense", the Court and Board should conclude Appellant met the criteria for "Insanity" at the time of the commission of the offense. The above claimed issues related to service-connection were not adjudicated where appellant experience a physical disease associated with the Traumatic brain injury, as well as mental health disorders related to the motor vehicle accident cause appellant behavior deviations. These <sup>issues</sup> have not been developed and adjudicated by the R.O.'s therefore must be remanded for appropriate action.

The evidence received since R.O.'s March, 2016 Administrative decision is new and material [Psychologists and Psychiatrist diagnoses and evaluation reports from Johnson and Rutledge STATE Prison Mental Health Department Privately Contracted by the STATE of Georgia] and the requirement to reopen the claim of entitlement to Service - Connection for Post closed head traumatic Brain Injury (Residuals), an acquired psychiatric disorder, Vertigo and PTSD, to also include related injuries to the 1984 Motor Vehicle accident have been met (see VA claim folder related to Appellant # 256216855) 38 U.S.C.A. 5108 (West 1991); 38 C.F.R. 3.156 (2002). where Appellant states Question as to whether the requisite claim Criteria for insanity for purposes are complex matters akin of medical matter which R.O.'s have layperson determination were not competent to testify. The Board must determine whether the claimed disability is a type of disability for which a layperson (R.O.'s) were competent to provide etiology or Nexus evidence. Davidson v. Shinnski' 581 F.3d 1313 (Fed Cir 2009); Espiritu v. Derwinski' 2 Vet. App. 492 (1992). Appellant made preliminary showing that his sanity at the time of the offense is a significant factor due process required the VA to provide access to a psychiatrist assistance on the issue to assure the Appellant has fair opportunity to present a defense. <sup>see</sup> Fourteenth Amendment's due process guarantee of fundamental fairness. U.S.C.A. Const. Amend. 14. Ake v. Oklahoma, 105 S.Ct. 1087. The above reasons presented is Basis for Remand of this case. Under the Penalty of perjury Appellant swears the above is true and correct to the best of his knowledge this 1<sup>st</sup> day of April, 2020

Sammie Lee Brown

SAMMIE LEE BROWN Appellant prose

### Certificate of Service

The within Motion to Remand with postage Affixed has been mailed to the following:  
Robert L. Wilkie, Secretary of Veterans Affairs Appellee Counsel:  
Kristen D. King-Holland, Appellate Attorney  
Office of General Counsel (O27K)  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, Washington, D.C. 20420

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Sammy Lee Brown

SAMMY LEE BROWN Appellant prose

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Kristen D. King-Holland, Appellate Attorney  
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FOR VETERAN CLAIMS

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