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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-5321

ROBERT L. CARTER, SR., APPELLANT,

V.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before TOTH, *Judge*.

MEMORANDUM DECISION

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

TOTH, *Judge*: Robert L. Carter, Sr., served in the Army from 1974 to 1975. Shortly after leaving service, he sought disability compensation for a left inguinal hernia. Eventually, service connection was granted for that hernia and for a scar left by hernia surgery performed in 1981. In the decision on appeal, the Board granted a hernia rating of 10% from March 24, 2006; and a scar rating of 10%, but no higher, from July 21, 1981. It also remanded the issues of entitlement to an initial compensable hernia rating from March 8, 1976, and a rating higher than 10% for bilateral plantar calluses.

Representing himself, Mr. Carter appeals certain aspects of the Board decision. Because he is pro se, the Court generously construes his brief. *See Gomez v. McDonald*, 28 Vet.App. 39, 43 n.1 (2015).

First, he asks the Court to "back date" the 10% hernia rating to March 1976. He contends that vocational rehabilitation training records from the early 1990s—which he says are not in the record before the agency—will help demonstrate the "severity" of the condition. Informal Br. at 1-3. These contentions pertain to an issue that was remanded: entitlement to an initial compensable hernia rating from March 8, 1976, up to March 24, 2006. Because a remand is not a final Board decision on an issue, the Court has no jurisdiction to consider this matter. *See Kirkpatrick v.*

Nicholson, 417 F.3d 1361, 1364 (Fed. Cir. 2005). If Mr. Carter believes there are outstanding records that are relevant to assessing the level of his hernia disability for the period before March 24, 2006, he may submit them himself or provide VA with sufficient information to allow the Agency to try to obtain them. He is also free on remand to argue why he believes he is entitled to a compensable hernia rating.

When asked in his informal brief whether the Board failed to apply or misapplied any law, case, or regulation, the veteran mentions a September 10, 2010, decision. The Court assumes Mr. Carter means to refer to the September 27, 2010, decision in which the Board found clear and unmistakable error (CUE) in the March 1976 rating decision that originally denied service connection for his hernia. VA then implemented the Board's CUE decision by assigning a noncompensable hernia rating from March 1976. To the extent Mr. Carter believes that VA erred in assigning a 0% rating rather than a compensable rating during this period, that is the sort of argument he has the opportunity to present to the Agency. The Court, however, cannot consider the issue at this time.

The other matter the veteran purports to appeal is the propriety of his hernia scar rating. Informal Br. at 1. But, after the first page of the brief, he makes no reference to his scar. Although the Court generously construes pro se briefs, "*every* appellant must carry the general burden of persuasion regarding contentions of error." *Goodwin v. Peake*, 22 Vet.App. 128, 132 (2008) (emphasis added). In any event, no error is apparent. The scar is evaluated under diagnostic code 7804, which provides a 10% rating for "[o]ne or two scars that are unstable or painful"; a higher 20% rating is only available if there are three or four unstable or painful scars. 38 C.F.R. § 4.118 (2019). The Board found that the veteran has only one scar, which is intermittently painful but not unstable. It also found that the scar was not compensable under any other diagnostic code in § 4.118. Accordingly, it awarded a rating of 10%, but no higher. Since nothing in the record obviously contradicts these factual findings, the Court discerns no clear error in the Board's analysis. *See English v. Wilkie*, 30 Vet.App. 347, 352 (2018).

Finally, the Court sees no merit to Mr. Carter's assertion that his scar compensation award should be effective from March 1976. The hernia surgery that resulted in the scar did not even take place until July 1981. And *that* is the effective date currently assigned.

After due consideration, the Court AFFIRMS the June 19, 2019, Board decision.

DATED: April 30, 2020

Copies to:

Robert L. Carter, Sr.

VA General Counsel (027)