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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-3610

JOHN HARO, 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*: John Haro challenges an April 2019 Board decision denying service connection for a lumbar spine disorder, including arthritis, spondylolisthesis, and spondylolysis. Mr. Haro generally argues that the Board erred and that he's entitled to a VA examination. After reviewing the Board's decision and the law, and generously construing the veteran's arguments, the Court concludes that it must affirm. *See Gomez v. McDonald*, 28 Vet.App. 39, 43 n.1 (2015).

Mr. Haro served in the Army from April 1947 to April 1952. The service treatment records (STRs) did not reflect any complaints or treatment for the low back, and the separation examination was normal. VA treatment records starting September 2001, when Mr. Haro first reported back problems to medical personnel, provided a notation that read "[a]rthritis secondary to parachute jumping." R. at 1033 (minor edits). A September 2012 private physician opined that his back pain was due to parachuting.

In October 2009, Mr. Haro sought service connection for a lumbar spine disorder, arguing that parachute jumps caused his condition. VA denied that claim, and it later became final. In the following years, Mr. Haro sought to reopen his claim, asserting that he had back pain since leaving service. VA reopened the claim in April 2013.

To develop the claim, VA obtained a January 2017 VA examination and November 2017 and September 2018 addendum opinions. Collectively, the opinions concluded that it was less likely than not that Mr. Haro's lumbar disorders, including arthritis and spondylolysis, were related to service.

Specifically, the September 2018 VA examiner reviewed the record and opined that Mr. Haro's conditions were not related to service because the STRs did not show complaints of low back pain and the separation exam was normal. Furthermore, the VA examiner found Mr. Haro's report that he "continued with his duties and was unaware that he had been injured" after parachute jumps to be "strong evidence" that his "purported injury was mild" and therefore unlikely to cause early degenerative changes or spondylolysis. R. at 41. The VA examiner concluded, after observing that Mr. Haro's first treatment for low back pain was in 2001, that aging more likely caused his arthritis. Regarding spondylolysis and spondylolisthesis, the VA examiner opined that it probably originated in childhood and that it would have been "unlikely" for Mr. Haro to have been "unaware" of an injury significant enough to cause or aggravate this condition. *Id.*

The September 2018 VA examiner also reviewed the VA treatment records purporting to connect Mr. Haro's back pain to service and concluded that they were simply reporting the veteran's "speculative" opinion about the cause of his back pain. R. at 42. The VA examiner noted that the VA treatment records did not contain adequate histories or rationales and that the preparing medical personnel did not rely on medical evidence, pointing out that they did not "obtain any imaging or even document which joint(s) the presumed arthritis supposedly involved." *Id.*

In the decision on appeal, the Board denied the claim. It found Mr. Haro's report of back pain since service not credible because it was inconsistent with contemporaneous STRs and because he did not mention back pain to medical personnel until 2001. The Board relied on the September 2018 VA examiner's opinion to make its medical determinations. It found the VA treatment records less probative concerning etiology for the reasons set forth by the September 2018 VA examiner and discounted the September 2012 private opinion because it provided no rationale. Mr. Haro appealed.

The veteran generally asserts that he's entitled to another VA examination. The Court construes this allegation of error as assertions that the Board failed to address relevant evidence and that the September 2018 VA opinion was inadequate. On both counts, the Court concludes that the Board did not err.

VA medical examinations are adequate when they are based on a review of the veteran's medical history and provide enough information that the Board can evaluate the relevant medical issues. *Sharp v. Shulkin*, 29 Vet.App. 26, 31 (2017). The Court reviews the Board's determination that an examination was adequate for clear error. *Id.* A finding is clearly erroneous when it lacks a plausible basis in the record. *Fears v. Wilkie*, 31 Vet.App. 308, 314 (2019). The Board must provide a statement of reasons or bases for its determinations that allows the claimant to understand the precise basis for them and facilitates judicial review. *Frost v. Shulkin*, 29 Vet.App. 131, 139 (2017). As part of this duty, the Board must address the probity, credibility, and persuasiveness of the evidence and address evidence potentially favorable to the veteran's claim. *Id.*

After reviewing the September 2018 VA opinion, the Court concludes that it was adequate. The examiner reviewed and thoroughly discussed the veteran's medical history. Furthermore, the examiner provided a conclusion and lengthy supporting rationale that addressed the veteran's statements and explained why factors other than service were more likely causes for his lumbar spine pain. Moreover, Mr. Haro does not allege that the VA examiner failed to account for specific evidence or that there were deficiencies in his rationale. For these reasons, the Court cannot conclude that the Board clearly erred in its adequacy determination.

Furthermore, the Board's statement of reasons or bases sufficed to inform the claimant about the precise bases for its determinations. The Board recounted the evidence of record, including the potentially favorable evidence. The Board determined that the VA treatment records purporting to show a nexus between service and his back pain were merely iterations of the veteran's speculative report that his current back pain was due to parachuting. Moreover, the Board found Mr. Haro's report of back pain since service not credible because it was inconsistent with record evidence, including a normal separation examination and a first report of back pain in 2001. Finally, the Board found the September 2012 private opinion not probative because it lacked a rationale. These findings were clearly articulated and based on plausible evidentiary bases. Although the Court sympathizes with Mr. Haro, it discerns no error.

Thus, having reviewed the record, the briefs, and the law, the Court AFFIRMS the April 3, 2019, Board decision.

DATED: April 30, 2020

Copies to:

John Haro

VA General Counsel (027)