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**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

No. 18-7225

DAVID L. BAUGHMAN, 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*: David L. Baughman, appearing pro se, challenges a September 2018 Board decision denying an effective date earlier than November 13, 2001, for PTSD (alternatively diagnosed as dysthymic disorder, mood disorder, and major depressive disorder). He argues that the Board ignored evidence of PTSD reflected in his treatment records and that it failed to apply the benefit of the doubt rule. For the following reasons, the Court affirms.

Mr. Baughman served in the Army from October 1967 to December 1970. April and November 1987 VA treatment records assessed the veteran with anxiety, depression, chronic anxiety syndrome, and possible delayed stress syndrome.

In April 1991, Mr. Baughman filed a disability compensation claim for delayed stress syndrome, which VA characterized as a claim for PTSD. VA scheduled a June 1991 VA examination. The examiner diagnosed persistent depressive disorder but not PTSD. VA denied his claim in an October 1991 rating decision, and it became final.

About 10 years later, on November 13, 2001, Mr. Baughman sought to reopen his claim for PTSD. After extensive proceedings, VA ultimately awarded service connection for PTSD and assigned a 100% rating, effective November 13, 2001, the date that he sought to reopen his claim.

Mr. Baughman appealed the effective date determination, arguing that he was entitled to compensation from 1991, when he was diagnosed with persistent depressive disorder.

In the decision on appeal, the Board denied an earlier effective date. The Board found that the October 1991 rating decision became final, so the earliest effective date for which entitlement to benefits could be established was the date he reopened his claim. Mr. Baughman appealed.

The Court construes the filings of pro claimants generously. *See Gomez v. McDonald*, 28 Vet.App. 39, 43 n.1 (2015). Here, Mr. Baughman argues that the Board "ignored a diagnosis of PTSD in 1987," failed "to obtain PTSD treatment records in 1987–88," and failed to apply the benefit of the doubt rule. Appellant's Informal Br. at 1–2. These allegations of error, however, have no impact on the Board's effective-date analysis.

For a claim to reopen a previously disallowed claim, the effective date of a benefits award is the later between the date the application to reopen is received or the date entitlement arose. 38 U.S.C. § 5110(a); 38 C.F.R. § 3.400(r) (2019). The Court reviews the Board's effective-date determinations for clear error. *See Canady v. Nicholson*, 20 Vet.App. 393, 398 (2006). An error is clear if it lacks a plausible basis in the record. *Id.*

Here, Mr. Baughman first filed a claim for a mental disorder in April 1991. VA denied that claim in an October 1991 rating decision. Mr. Baughman does not argue that he filed a Notice of Disagreement or otherwise indicate that he attempted to appeal that determination, and there is no evidence in the record that he did. For this reason, the October 1991 rating decision became final. *See* 38 U.S.C. § 7105(c). It wasn't until November 13, 2001, that the veteran sought to reopen his claim for a mental disorder. The Board clearly articulated this in its decision, set forth the law governing effective dates for reopened claims, and therefore concluded that November 13, 2001, was the earliest effective date warranted for his PTSD. The Court discerns no error in this determination. If Mr. Baughman disagrees with the October 2001 rating decision, he must file a motion for revision based on clear and unmistakable error. *See* 38 U.S.C. § 5109A.

Next, the Court concludes that the benefit of the doubt rule did not apply to this case. The benefit of the doubt rule under 38 U.S.C. § 5107(b) is only applicable in situations where the Board determines that the evidence is in relative equipoise. *Fagan v. Shinseki*, 573 F.3d 1282, 1287 (Fed. Cir. 2009). In the event that the Board makes this determination, the rule obliges it to resolve the matter in favor of the veteran. *Id.* However, the rule "is not a means of reconciling actual conflict or a contradiction in the evidence" and "has no application where the Board determines that the

preponderance of the evidence weighs against the veteran's claim." *Id.* Here, the Board determined that there was "no evidence to support the assignment of an effective date earlier than November 13, 2001." R. at 6. Thus, the benefit of the doubt rule did not apply to this case.

Finally, Mr. Baughman argues that the Board erred in failing to mention service connection for "AHD" or "AHC" in its decision. Appellant's Informal Br. at 1, 3. Neither the Court nor the Secretary understands what is meant by these references, and Mr. Baughman nowhere explains their meaning. The Secretary's guess is that these refer to "a heart condition." Secretary's Br. at 11. This makes sense because Mr. Baughman is service connected for ischemic heart disease/coronary artery disease. R. at 2247. Nevertheless, the only issue before the Board in the decision on appeal was for an earlier effective date for PTSD. The Board did not decide any other issue or claim. Since the Court's jurisdiction is limited to reviewing final decisions, the Court cannot review that issue. *See Sellers v. Wilkie*, 30 Vet.App. 157, 165-66 (2018). Moreover, it appears that that issue should not have been before the Board—Mr. Baughman expressly waived that claim during the administrative appeal. R. at 871, 891–92.

Accordingly, after generously construing Mr. Baughman's informal brief and reviewing the law and record, the Court AFFIRMS the September 20, 2018, Board decision.

DATED: April 30, 2020

Copies to:

David L. Baughman

VA General Counsel (027)