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

No. 19-0116

BILLY STORY, APPELLANT,

V.

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

Before BARTLEY, *Chief Judge*.

**MEMORANDUM DECISION**

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

BARTLEY, *Chief Judge*: Veteran Billy Story appeals through counsel a September 10, 2018, Board of Veterans' Appeals (Board) decision denying service connection for bilateral upper and lower extremity peripheral neuropathy and entitlement to a disability evaluation in excess of 50% for service-connected post-traumatic stress disorder (PTSD). Record (R.) at 4-21. For the reasons that follow, the Court will set aside the September 2018 Board decision and remand the matters for further development and readjudication consistent with this decision.

## I. FACTS

Mr. Story served on active duty in the U.S. Army from March 1968 to March 1970, including service in Vietnam. R. at 1727, 1980. He filed a July 2010 claim for service connection for PTSD. R. at 2056. With his claim, he filed a statement reporting nightmares, flashbacks, loss of his first marriage, and hospitalization, and that he has been unemployed for over a year. R. at 2046-47, 2050.

In September 2010, Mr. Story described to a VA psychologist nightmares, impaired memory, and hearing his girlfriend or son call his name. R. at 2002. He reported that his son lives

with grandparents. *Id*. The psychologist described a dysphoric and tearful mood and limited insight, and diagnosed PTSD. R. at 2002-03.

Mr. Story saw another VA psychiatrist in October 2010, who concurred with the PTSD diagnosis and added a diagnosis for bipolar disorder. R. 1997. The veteran described flashbacks, nightmares, insomnia, auditory hallucinations, irritability, anxiety, rapid thoughts, poor concentration, and poor retention and recall. R. at 1994. Later that month, Mr. Story told the psychologist that he was estranged from his children and had ongoing memory complaints. R. at 2000.

At a June 2011 VA examination, Mr. Story endorsed a history of being violent towards his family and a past suicide attempt. R. at 1972, 1974. He recounted the end of his first marriage, occasional contact with his children from that marriage, current relationship of 17-year duration, and that his younger son from this second relationship lives with grandparents due to the veteran's mental condition. R. at 1974. He also reported that he receives Social Security Administration (SSA) retirement benefits and last worked 3 years prior. R. at 1974. The examiner noted the veteran's complaints of sleep impairment, panic attacks, and normal memory, but found no delusions, impairment of judgment or insight, hallucinations, or inappropriate or obsessive behavior. R. at 1975-76. The diagnoses were PTSD and bipolar disorder. R. at 1981.

In September 2011, a VA regional office (RO) awarded service connection for PTSD with bipolar disorder and assessed a 30% initial evaluation. R. at 1946. Mr. Story appealed that initial evaluation, R. at 1901; the RO responded with a Statement of the Case (SOC), R. at 1860-82; and he timely perfected his appeal, R. at 1855-56.

During VA psychiatric treatment in May 2013, Mr. Story reported nightmares, irritability, isolation, and difficulty in crowds. R. at 1371. Although he reported hearing someone call his name, the psychologist found no auditory or visual hallucinations; no delusional thoughts; and fair judgment, insight, and impulse control. R. at 1372. Mr. Story saw this psychologist again in October 2013, reporting continued nightmares and sleep paralysis with lesser symptoms of panic attacks, irritability, and anger. R. at 1334-35. In January 2014, the veteran reported decreased episodes of sleep paralysis, but two to three weekly panic attacks, depression, and olfactory hallucinations. R. at 1321. And at a December 2015 VA mental health appointment, Mr. Story complained of insomnia, flashbacks, and nightmares and reported that he had recently separated

from his long-term girlfriend after 27 years together. R. at 227. The psychiatrist noted depression, anxiety, and restlessness with decreased interest. *Id*.

In August 2016, Mr. Story sought VA medical treatment for lower extremity pain existing for several months and chronic peripheral neuropathy. R. at 195. The doctor diagnosed left leg claudication and peripheral neuropathy with a history of Agent Orange exposure. R. at 197.

In September 2016, the veteran filed a claim for service connection for peripheral neuropathy of the bilateral lower extremities associated with herbicide exposure in Vietnam. R. at 1574. At a November 2016 VA examination, he described numbness in his feet and legs beginning many years ago and attributed this numbness to his exposure to Agent Orange in Vietnam. R. at 1127. The examiner noted moderate pain, paresthesias, and numbness in all four extremities with decreased sensation in a stocking and glove pattern, but normal reflexes, full muscle strength without muscular atrophy, and no trophic changes. R. at 1128-30. The examiner found moderate incomplete paralysis of the median, ulnar, and sciatic nerves. R. at 1131-32. The examiner could not link Mr. Story's peripheral neuropathy to his in-service herbicide exposure without resorting to mere speculation, explaining that, while some types of peripheral neuropathy are presumptively caused by Agent Orange exposure, Mr. Story's peripheral neuropathy had its onset outside the expected window and has lasted longer than expected for herbicide-based peripheral neuropathy. R. at 1135.

In November 2016, the RO denied service connection for peripheral neuropathy in each upper and lower extremity. R. at 1112-17. Mr. Story appealed, R. at 1092-93; the RO responded with an SOC, R. at 840-85; and he timely perfected his appeal, R. at 47. In September 2017, the Board remanded Mr. Story's increased evaluation claim for PTSD to obtain his SSA records and to schedule a more recent VA examination. R. at 1080-83. The subsequently obtained SSA records show that Mr. Story is disabled, primarily due to degenerative disc disease, and secondarily due to anxiety and affective disorders. R. at 958, 963, 968.

During Mr. Story's mental health treatment in November 2017, the psychiatrist recorded the veteran's reports of difficulty staying asleep, nightmares, anxiety, depressed mood, irritability, intrusive memories, panic attacks, hearing voices call his name, and decreased interest, energy, and concentration. R. at 641-42, 646. However, the psychiatrist described the veteran's thought process as linear, thought content as lacking hallucinations or delusions, and judgment and insight as fair. R. at 644.

A November 2017 VA examiner was unable to differentiate between the veteran's symptoms of PTSD, bipolar disorder, and panic disorder with anxiety. R. at 933. The examiner assessed occupational and social impairment with reduced reliability and productivity. R. at 934. Mr. Story reported that he is still in his second relationship and denied family relationship problems, specifying that he speaks to his children weekly and his siblings monthly. *Id.* The examiner found symptoms of depressed mood, anxiety, weekly panic attacks, chronic sleep impairment, disturbances of motivation and mood, low interest, hypervigilance, irritable behavior, exaggerated startle response, and impaired concentration. R. at 941, 943. Based on those results, the RO issued a November 2017 rating decision increasing his PTSD evaluation to 50%, effective the date of that examination. R. at 899-901.

In the September 2018 decision on appeal, the Board found that the evidence supported the 50% evaluation for PTSD as of the date of his July 2010 claim, demonstrating occupational and social impairment with reduced reliability and productivity due to disturbances of motivation and mood, intrusive thoughts, depression, anxiety, impaired memory and concentration, chronic sleep impairment, hypervigilance, exaggerated startle response, and weekly panic attacks. R. at 12-13. The Board denied an evaluation in excess of 50%, acknowledging his remote suicide attempt, but finding no evidence of occupational and social impairment with deficiencies in most areas. R. at 13. The Board highlighted his successful relationships with his girlfriend, children, friends, and neighbors. R. at 14.

As to peripheral neuropathy, the Board noted the diagnoses of record for bilateral upper and lower peripheral neuropathy, R. at 17, but rejected the August 2016 VA physician's entry that Mr. Story has a history of chronic peripheral neuropathy with exposure to Agent Orange in Vietnam because that assessment lacked supporting rationale, R. at 19. By contrast, the Board found the November 2016 VA examination report and opinion adequate and weighed it more heavily than the August 2016 VA physician's opinion and the veteran's non-competent etiology lay statements. R. at 19-21. This appeal followed.

## II. JURISDICTION AND STANDARD OF REVIEW

Mr. Story's appeal is timely and the Court has jurisdiction to review the September 2018 Board decision pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). Single-judge disposition is appropriate. *See Frankel v Derwinski*, 1 Vet.App. 23, 25-26 (1990).

The duty to assist includes providing a medical examination or obtaining a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. 38 C.F.R. § 3.159(c)(4) (2019); *see* 38 U.S.C. § 5103A(d). The Board's determinations regarding the adequacy of a medical examination or opinion, service connection, and the appropriate degree of disability are findings of fact subject to the "clearly erroneous" standard of review. 38 U.S.C. § 7261(a)(4); *see D'Aries v. Peake*, 22 Vet.App. 97, 104 (2008); *Smallwood v. Brown*, 10 Vet.App. 93, 97 (1997). "A factual finding 'is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Hersey v. Derwinski*, 2 Vet.App. 91, 94 (1992) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)); *see Gilbert v. Derwinski*, 1 Vet.App. 49, 52 (1990) (explaining that the Court "is not permitted to substitute its judgment for that of the [Board] on issues of material fact" and therefore may not overturn the Board's factual determinations "if there is a 'plausible' basis in the record for [those] determinations").

As with any finding on a material issue of fact and law presented on the record, the Board must support its factual determinations with adequate reasons or bases that enable the claimant to understand the precise basis for that determination and facilitates review in this Court. 38 U.S.C. § 7104(d)(1); *Gilbert*, 1 Vet.App. at 56-57; *see Mittleider v. West*, 11 Vet.App. 181, 182 (1998) (explaining that the need for adequate reasons or bases is "particularly acute when [Board] findings and conclusions pertain to the degree of disability resulting from mental disorders"). To comply with this requirement, the Board must analyze the credibility and probative value of evidence, account for evidence that it finds persuasive or unpersuasive, and provide reasons for its rejection of material evidence favorable to the claimant. *Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff'd per curiam*, 78 F.3d 604 (Fed. Cir. 1996) (table). The Board must also address all potentially favorable evidence. *See Thompson v. Gober*, 14 Vet.App. 187, 188 (2000) (per curiam order).

## III. ANALYSIS

### A. Peripheral Neuropathy

Mr. Story argues that the Board clearly erred by relying on, or in the alternative provided inadequate reasons or bases for relying on, the November 2016 VA medical opinion to deny service connection for peripheral neuropathy. Appellant's Brief (Br.) at 10. Specifically, he argues that the November 2016 examiner failed to address direct, rather than presumptive, service

connection and did not address his individual risk factors, instead relying solely on statistical analysis. Appellant's Br. at 10, 12-13. The Secretary agrees. Secretary's Br. at 4-7.

Establishing service connection generally requires medical or, in certain circumstances, lay evidence of (1) a current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a link between the claimed in-service disease or injury and the present disability. *Romanowsky v. Shinseki*, 26 Vet.App. 289, 293 (2013). Generally, veterans who served in Vietnam are presumed to have been exposed to herbicide agents, such as Agent Orange, unless there is affirmative evidence to the contrary. 38 U.S.C. § 1161(a)(1); 38 C.F.R. § 3.307(a)(6)(iii) (2019). Certain diseases, including early-onset peripheral neuropathy, are presumptively service connected if a veteran was exposed to Agent Orange. 38 C.F.R. § 3.309(e) (2019). To be presumptively service connected, early-onset peripheral neuropathy must have become manifest to a degree of 10% or more within a year after the last date on which the veteran was exposed to an herbicide agent. 38 C.F.R. § 3.307(a)(6)(ii) (2019).

But a condition's absence from the presumptive list does not preclude a veteran from establishing direct service connection for that condition due to in-service herbicide exposure. *See Polovick v. Shinseki*, 23 Vet.App. 48, 52-53 (2009); *Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007). In such cases, factors such as "whether a medical professional finds studies persuasive, whether there are other risk factors that might be the cause of the condition for which benefits are sought, and whether the condition has manifested itself in an unusual manner" may affect the analysis. *Polovick*, 23 Vet.App. at 53.

In this case, Mr. Story served in Vietnam during the relevant period and is therefore presumed to have been exposed to herbicides. R. at 1727, 1980. Additionally, the August 2016 VA treatment records and November 2016 VA examination report reflect that Mr. Story has been diagnosed with peripheral neuropathy in all four extremities. R. at 197, 1127. However, he has not been diagnosed with early-onset peripheral neuropathy, and the November 2016 examiner noted that his peripheral neuropathy had its onset outside the expected window of within one year of active service. R. at 1135; *see* 38 C.F.R. § 3.307(a)(6)(iii), 3.309(e). In the examiner's opinion, it would be mere speculation to relate Mr. Story's peripheral neuropathy to his Agent Orange exposure because his peripheral neuropathy had its "onset outside the expected window and lasted longer than the expected time course for any peripheral neuropathy expected to result from [A]gent

[O]range exposure within the current prescribed guidelines for presumptive service connection of that condition." R. at 1135.

When VA provides the claimant with a medical examination or obtains a medical opinion, the Secretary must ensure that the examination or opinion is adequate. *Barr v. Nicholson*, 21 Vet.App. 303, 311 (2007). A VA medical opinion is adequate "where it is based upon consideration of the veteran's prior medical history and examinations," *Stefl*, 21 Vet.App. at 123, "describes the disability ... in sufficient detail so that the Board's 'evaluation of the claimed disability will be a fully informed one'," *id.* (quoting *Ardison v. Brown*, 6 Vet.App. 405, 407 (1994)), and "sufficiently inform[s] the Board of a medical expert's judgment on a medical question and the essential rationale for that opinion," *Monzingo v. Shinseki*, 26 Vet.App. 97, 105 (2012). *See Acevedo v. Shinseki*, 25 Vet.App. 286, 293 (2012) ("[A]n adequate medical report must rest on correct facts and reasoned medical judgment so as [to] inform the Board on a medical question and facilitate the Board's consideration and weighing of the report against any contrary reports."); *Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008) ("[A] medical examination report must contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two.").

The Court agrees with the parties that the November 2016 examiner's opinion is inadequate. Notably, the examiner failed to consider any risk factors specific to Mr. Story and based his conclusion simply on the fact that the claimed condition had its onset and duration beyond the time "expected" for presumptive service connection. R. at 1135. "A medical nexus opinion finding a condition is not related to service *because* the condition is not entitled to presumptive service connection, without clearly considering direct service connection, is inadequate on its face." *Stefl*, 21 Vet.App. at 124 (emphasis in original); *cf. Polovick*, 23 Vet.App. at 55 (finding that the Board provided inadequate reasons or bases for relying on a medical opinion that was "based solely on the fact that this disease is listed in the 'Limited Evidence of No Association' category" without addressing the veteran's risk factors and the unique presentation and development of the veteran's brain tumor).

Therefore, the Board clearly erred in relying on the November 2016 opinion to deny the claim for service connection for peripheral neuropathy of the upper and lower extremities. *See D'Aries*, 22 Vet.App. at 104; *Ardison*, 6 Vet.App. at 407. Accordingly, remand is warranted to obtain a medical opinion that adequately addresses the likelihood that Mr. Story's herbicide

exposure caused his peripheral neuropathy. *See Barr*, 21 Vet.App. at 311; *Tucker v. West*, 11 Vet.App. 369, 374 (1998) (holding that remand is warranted "where the Board has incorrectly applied the law, failed to provide an adequate statement of reasons or bases for its determinations, or where the record is otherwise inadequate.").

B. PTSD

Mr. Story next argues that the Board failed to provide adequate reasons or bases for denying a PTSD evaluation in excess of 50% because it failed to address favorable evidence of his most severe symptoms. Appellant's Br. at 10. He specifies that the evidence of record reflects hallucinations, difficulty in adapting to stressful circumstances, avoidant behavior, and problems in his relationships with his long-term girlfriend and son. Appellant's Br. at 17-20, 22-23. The Secretary acknowledges that the record reflects such symptoms, but argues that the Board adequately considered them, highlighting that the record also reflects occasions when Mr. Story denied such symptoms. Secretary's Br. at 8-10. The Secretary argues that the Board plausibly found that such symptoms did not persist throughout the appeal period and therefore cannot support a higher evaluation. *Id.*

PTSD is evaluated under 38 C.F.R. § 4.130, Diagnostic Code (DC) 9411. Under that DC, a 50% evaluation is warranted when evidence shows

> [o]ccupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships.

38 C.F.R. § 4.130, DC 9411 (2019). A 70% evaluation is warranted when evidence shows

> [o]ccupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships.

*Id*. The maximum 100% evaluation for PTSD is warranted where the evidence shows

> [t]otal occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name.

*Id*.

Use of the term "such symptoms as" in § 4.130 indicates that the list of symptoms that follows is nonexhaustive, meaning that VA is not required to find the presence of all, most, or even some of the enumerated symptoms to assign a particular evaluation. *Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 115 (Fed. Cir. 2013); *see Sellers v. Principi*, 372 F.3d 1318, 1326-27 (Fed. Cir. 2004); *Mauerhan v. Principi*, 16 Vet.App. 436, 442 (2002). However, because "[a]ll nonzero disability levels [in § 4.130] are also associated with objectively observable symptomatology," and the plain language of the regulation makes it clear that "the veteran's impairment must be 'due to' those symptoms," "a veteran may only qualify for a given disability rating under § 4.130 by demonstrating the particular symptoms associated with that percentage, or others of similar severity, frequency, and duration." *Vazquez-Claudio*, 713 F.3d at 116-17. In sum, VA is required to perform a "holistic analysis" in which it "assesses the severity, frequency, and duration of the signs and symptoms of the veteran's service-connected mental disorder; quantifies the level of occupational and social impairment caused by those signs and symptoms; and assigns an evaluation that most nearly approximates that level of occupational and social impairment." *Bankhead v. Shulkin*, 29 Vet.App. 10, 22 (2017).

Here, the Board's reasons or bases for denying an evaluation in excess of 50% for PTSD are inadequate because the Board ignored potentially favorable evidence of severe psychiatric symptoms. *See Gabrielson v. Brown*. 7 Vet.App. 36, 40 (1994) (holding that the Board cannot evade its statutory duty to discuss all relevant, favorable evidence). Notably, the record includes references to auditory and olfactory hallucinations in September 2010, October 2010, May 2013, October 2013, January 2014, and October 2017. R. at 646, 1321, 1335, 1372, 1994, 2002. The Secretary is correct that the Board acknowledged auditory hallucinations in October 2010, R. at 9, but the Board failed to note the other instances of auditory and olfactory hallucinations of record, R. at 9-11. Similarly, the Board noted that in June 2011, Mr. Story's son had been placed in the custody of his grandparents due to the veteran's mental health condition, R. at 10, but failed to note that the record reflects that his son had not lived with him since at least October 2010, R. at 1994,

and that he had separated from his girlfriend of 27 years in December 2015, R. at 227. Moreover, while the Secretary characterizes Mr. Story's argument that the Board failed to consider these symptoms as a mere dispute with the Board's weighing of the evidence, Secretary's Br. at 10, the Board failed to assign any weight to these symptoms in finding no evidence of deficiencies in family relations or persistent hallucinations. R. at 13. The Board's failure to address this potentially favorable material evidence of record, which could support a higher PTSD evaluation, renders inadequate its reasons or bases for denying an evaluation in excess of 50%. *See Thompson*, 14 Vet.App. at 188; *Caluza*, 7 Vet.App. at 506. Consequently, remand of the claim is required. *See Tucker*, 11 Vet.App. at 374.

C. TDIU

Mr. Story finally argues that the Board failed to address the reasonably raised issue of entitlement to a total disability evaluation due to individual unemployability (TDIU). Appellant's Br. at 23. The Secretary responds that Mr. Story did not raise the issue of TDIU because he did not submit evidence of unemployability due to PTSD. Secretary's Br. at 12-13.

The Board must consider all theories of entitlement to VA benefits that are either expressly raised by the claimant or reasonably raised by the record. *Robinson v. Peake*, 21 Vet.App. 545, 553 (2008), *aff'd sub nom. Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009). The issue of entitlement to TDIU, "whether expressly raised by a veteran or reasonably raised by the record, is not a separate claim for benefits, but rather . . . part of the initial adjudication of a claim or . . . part of a claim for increased compensation." *Rice v. Shinseki*, 22 Vet.App. 447, 453 (2009). "Once a veteran submits evidence of a medical disability and makes a claim for the highest rating possible, and additionally submits evidence of unemployability, . . . VA must consider TDIU." *Roberson v. Principi*, 251 F.3d 1378, 1384 (Fed. Cir. 2001); *see Comer v. Peake*, 552 F.3d 1362, 1367 (Fed. Cir. 2009) (holding that entitlement to TDIU "is implicitly raised whenever a pro se veteran, who presents cogent evidence of unemployability, seeks to obtain a higher disability rating"); *Bankhead*, 29 Vet.App. at 24 (explaining that entitlement to TDIU is reasonably raised when "the record contains evidence of unemployability, either submitted by the veteran or developed by VA"). The Court has jurisdiction to review whether the Board erred in failing to consider reasonably raised issues. *Barringer v. Peake*, 22 Vet.App. 242, 244 (2008).

The Court agrees with Mr. Story that the Board erred by failing to address entitlement to TDIU. That issue was reasonably raised by the SSA records showing that he was disabled, in part,

due to his psychiatric conditions, R. at 958, 963, 968. Moreover, Mr. Story filed a statement with his initial claim for service connection for PTSD reporting that he had been unemployed for over a year, R. at 2050, and the Board failed to review that statement, R. at 5-15.

The Secretary argues that the evidence reflects that Mr. Story is primarily unemployed due to physical injuries incurred during his employment. Secretary's Br. at 13. However, the existence or degree of non-service-connected disabilities or previous unemployability status will be disregarded in adjudicating TDIU. 38 C.F.R. § 4.16(a) (2019). In this regard, it is irrelevant that Mr. Story reported that he retired because of physical injuries. R. at 1981. Because Mr. Story sought a higher initial evaluation and presented evidence of unemployability, the issue of entitlement to TDIU was reasonably raised and the Board was required to address it. *See Comer*, 552 F.3d at 1367; *Roberson*, 251 F.3d at 1384; *Bankhead*, 29 Vet.App. at 24; *see also Barringer*, 22 Vet.App. at 244. The Board's failure to do so necessitates remand. *See Tucker*, 11 Vet.App. at 374.

On remand, Mr. Story is free to submit additional arguments and evidence in accordance with *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order), and the Board must consider any such evidence or argument submitted. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002). The Court reminds the Board that "[a] remand is meant to entail a critical examination of the justification for the [Board's] decision," *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991), and must be performed in an expeditious manner in accordance with 38 U.S.C. § 7112.

## IV. CONCLUSION

Upon consideration of the foregoing, the September 10, 2018, Board decision is SET ASIDE and the matters are REMANDED for further development and readjudication consistent with this decision

DATED: April 30, 2020

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