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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-2509

CHARLES A. WATSON, 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*: Pro se veteran Charles A. Watson appeals a February 2019 Board decision that denied service connection for sleep apnea, as secondary to service-connected PTSD. Because the Secretary concedes that the Board did not ensure substantial compliance with its August 2017 remand directives, the Court vacates and remands.

In support of his sleep apnea claim, Mr. Watson submitted a 2008 statement from Dr. Hassan Jabbour, noting that PTSD might aggravate sleep apnea. In August 2017, the Board remanded for VA to obtain an addendum medical opinion that addressed the statement. But the VA examiner selected said she could not locate Dr. Jabbour's statement and, thus, declined to provide the requested opinion. The Board likewise said Dr. Jabbour's statement wasn't of record, faulted the veteran, and decided the claim without the requested VA opinion.

A remand confers on a claimant the right to substantial compliance with the remand instructions. *See Donnellan v. Shinseki*, 24 Vet.App. 167, 176 (2010). On appeal, the Secretary notes that Dr. Jabbour's statement was of record at all relevant times. *See R.* at 583-84. (This is Mr. Watson's main point in his brief.) Given this, the Secretary concedes that the Board erred in deciding the sleep apnea claim without the VA addendum opinion that, despite its remand instructions, was not obtained. The Court accepts the Secretary's concession that the Board erred

and that remand is warranted so that the Board can ensure that VA obtains an addendum opinion as the Board requested in August 2017.

Accordingly, the Court VACATES the February 12, 2019, Board decision and REMANDS the matter for readjudication consistent with this opinion.

DATED: April 30, 2020

Copies to:

Charles A. Watson

VA General Counsel (027)