

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-2412

SAM RAY STAGGS, APPELLANT,

v.

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

Before PIETSCH, *Judge*.

MEMORANDUM DECISION

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

PIETSCH, *Judge*: Sam Ray Staggs appeals pro se a July 6, 2017, Board of Veterans' Appeals (Board) decision that denied a motion to revise a December 2002 regional office (RO) decision on the basis of clear and unmistakable error (CUE). This appeal is timely, and the Court has jurisdiction to review the Board's decision pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). Single-judge disposition is appropriate as the issue is of "relative simplicity" and "the outcome is not reasonably debatable." *Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons that follow, the Court will affirm the July 6, 2017, Board decision.

I. FACTS

Mr. Staggs served on active duty in the U.S. Army from April 1970 to December 1971, including service in Vietnam. Record (R.) at 2303. In November 1984, he filed a claim for VA benefits for nerves. R. at 2257-60. The RO denied his claim in January 1985. R. at 2255. Mr. Staggs did not appeal that decision, and it became final.

After Mr. Staggs filed a claim for VA benefits for PTSD in June 1987, R. at 2248-51, the RO informed him that his claim could not be reopened without the submission of new and material

evidence. R. at 2246. The RO stated that no further action would be taken unless he submitted such evidence. *Id.*

In April 1993, Mr. Staggs sought to reopen his claim for benefits for PTSD. R. at 2186. He underwent a VA PTSD examination in June 1993, at which the examiner diagnosed him with major depression and passive-aggressive personality traits under the then-current third edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III), but the examiner did not diagnose him with PTSD. R. at 2121. The RO denied Mr. Staggs's claim in September 1993. R. at 2110-11.

Mr. Staggs appealed that decision and submitted a November 1993 letter from his physician stating that he reacted "abnormally to stress and it is possible that this is related to a post-traumatic stress syndrome." R. at 2065. Mr. Staggs also submitted a January 1994 statement from a person who worked at a guidance center where he received counseling, reflecting that he had major depression, generalized anxiety disorder, and PTSD. R. at 2063. In February 1994, the RO continued to deny Mr. Staggs's claim, noting the possible diagnoses of PTSD in the record, but stating that neither statement came from a board-certified psychiatrist or identified any traumatic military experience or other criteria on which to base a diagnosis of PTSD. R. at 2095. Instead, the RO relied on the June 1993 VA examiner's opinion that Mr. Staggs's symptoms did not support a diagnosis of PTSD. R. at 2095-96.

Mr. Staggs continued his appeal and submitted a February 1994 statement from another private physician, in which the physician stated that Mr. Staggs "is exhibiting symptoms congruent with the diagnosis of [PTSD]." R. at 2042. The physician stated that Mr. Staggs needed treatment for his depression and anxiety and that the condition was "precipitated by the emotional trauma experienced during his tour of duty in Vietnam." R. at 2043. In a March 1994 decision, the RO continued to deny Mr. Staggs VA benefits for PTSD, finding that the February 1994 private physician's statement did not contain sufficient findings to support a diagnosis of PTSD under the DSM-III. R. at 2032, 2023-25.

Mr. Staggs appealed the denial of his claim and underwent a VA PTSD examination in November 1995, at which the examiners stated that "[i]t is very clear to this board that Mr. Staggs does not have [PTSD] or any other anxiety disorder." R. at 1954. The examiners stated that Mr. Staggs instead had delusions and paranoia, diagnosing him with a psychotic disorder, not otherwise

specified. R. at 1954-55. In October and December 1995, the RO issued decisions continuing to deny his claim. R. at 1957-58, 1942-43. The Board also denied his claim in May 1996. R. at 1912-21. Mr. Staggs appealed that decision to the Court, and the Court affirmed the Board's decision and denied a motion for panel consideration. R. at 1852-57, 1759. Mr. Staggs did not appeal the Court's decision.

In January 1999, Mr. Staggs sought to reopen his claim for benefits for PTSD and submitted a March 1998 medical record from a private psychologist, in which he was diagnosed with PTSD. R. at 1832-35. Mr. Staggs also submitted a May 1999 private psychological examination report in which he was diagnosed with PTSD under the fourth edition of the DSM (DSM-IV). R. at 1790-96. The RO continued to deny his claim in June 1999. R. at 1777-78.

Mr. Staggs underwent a VA PTSD examination in November 1999, at which the examiner found that Mr. Staggs did not meet the diagnostic criteria for PTSD, but instead diagnosed him with recurrent, major depressive disorder and a personality disorder not otherwise specified. R. at 1746-47. In December 1999, the RO continued to deny Mr. Staggs's claim. R. at 1740-42. Mr. Staggs appealed that matter and submitted a March 2000 private psychological treatment record, in which he was again diagnosed with PTSD. R. at 1709-13.

In December 2002, the RO granted Mr. Staggs VA benefits for PTSD and assigned a 30% disability rating, effective March 11, 2000, based on the date of the private examiner's "comprehensive psychiatric evaluation" diagnosing Mr. Staggs with PTSD. R. at 1444. The RO acknowledged that earlier medical records contained diagnoses of PTSD, but found that Mr. Staggs had exaggerated his symptoms. *Id.*

In February 2003, Mr. Staggs sought an increased disability rating, which the RO construed as a Notice of Disagreement with his assigned disability rating. R. at 1432. The RO subsequently increased his disability rating to 50%, effective February 2003. R. at 1329-33. In October 2003, Mr. Staggs sought a higher disability rating and a total disability rating based on individual unemployability (TDIU). R. at 1323-24. In a June 2004 decision, the RO increased his disability rating to 70%, effective October 2003, and granted TDIU from the same date. R. at 1275-80.

Mr. Staggs submitted a statement in June 2004, requesting a "total and permanent" 100% disability rating "from the beginning of [his] appeal." R. at 1236-40. He argued that the VA had not previously considered the February 1994 medical report that contained a diagnosis of PTSD.

Id. In September 2004, the RO denied him an increased disability rating and an earlier effective date for PTSD. R. at 1194-99. In doing so, the RO noted that the February 1994 diagnosis had previously been found equivocal, a finding that was affirmed by the Board and the Court. R. at 1198. The RO stated that PTSD was not unequivocally diagnosed until the March 11, 2000, examination. *Id.* Mr. Staggs appealed that decision, arguing that he filed his claim in 1993 and that the 1994 PTSD diagnosis should be considered sufficient to grant the claim from that date. R. at 1189-90.

In June 2005, the RO increased Mr. Staggs's disability rating for PTSD to 100%, effective October 2003. R. at 1116-20. In a separate decision, the RO continued to deny him an earlier effective date for the initial award of benefits. R. at 997-1015. Mr. Staggs appealed that decision and later submitted a July 2005 letter from the same doctor who rendered the February 1994 PTSD diagnosis, in which the doctor stated that his February 1994 examination report was intended to "definitely" diagnose Mr. Staggs with PTSD. R. at 967. In a May 2006 decision, the RO stated that the newly submitted letter was duplicative and did not address that problem with the 1994 diagnosis, specifically that it was not consistent with the DSM-III criteria. *See* R. at 936-37.

The Board issued a decision in January 2008, finding that, based on Mr. Staggs's filings, he did not properly appeal the effective date of his award of benefits for PTSD, but had instead disputed only the assigned disability rating. R. at 833. The Board remanded the issues of the initial disability rating and the staged disability ratings for the preparation of an appropriate Statement of the Case (SOC). R. at 833-34.

The RO issued the requested SOC in July 2008, discussing Mr. Staggs's initial 30% disability rating and later staged ratings of 50% from February 2003 and 100% from October 2003. R. at 748-89. As part of this decision, the RO discussed the procedural history of Mr. Staggs's claim, including the evidence he had submitted, as well as his argument that he was entitled to benefits from March 1993. R. at 777-86. The record of proceedings before the Court contains several screenshots from the Veterans Appeals Control and Locator System (VACOLS) indicating the status of Mr. Staggs's appeal. A July 30, 2008, entry in VACOLS lists "compensation" under the program heading with a note of "for PTSD from 1993" and a disposition of "[b]enefits [g]ranted" and "[n]ew [e]vidence" under the disposition heading. R. at 617.

Mr. Staggs continued his appeal in August 2008, again arguing that he is entitled to an earlier effective date for his benefits for PTSD. R. at 740-44. His appeal was certified to the Board in October 2008. R. at 738. In November 2008, Mr. Staggs went to the RO to ask about the July 2008 VACOLS entry, requesting a copy of the award of an earlier effective date. R. at 727. The service representative at the RO noted that VACOLS showed that he had been granted benefits for PTSD from 1993. *Id.* However, the representative decided to call the Appeals Management Center with Mr. Staggs present for clarification. *Id.* During that call, Mr. Staggs was informed that the July 30, 2008, entry was created in error because the July 2008 SOC did not grant him an earlier effective date and that his appeal was still pending. *Id.* Mr. Staggs later requested a copy of the July 2008 VACOLS entry from the Board's FOIA and Privacy Act officer, Margaret Peake. R. at 714. Ms. Peake provided him with the requested copy in December 2008. R. at 710. In December 2008, Mr. Staggs called VA asking why his benefits were granted in July 2008 but he was later told his appeal was still pending. R. at 702.

The Board issued another decision in March 2010, noting that Mr. Staggs had not timely appealed the effective date assigned in December 2002, again finding that his initial disagreement focused only on the disability rating assigned. R. at 662-63. The Board stated that, because he did not raise the issue of the appropriate effective date for the award of his benefits until June 2004, a motion for revision of the December 2002 decision based on CUE served as his only avenue to a grant of an earlier effective date. R. at 663. In that decision, the Board also increased Mr. Staggs's disability rating for PTSD to 100%, effective March 11, 2000. R. at 664-76.

In May 2010, Mr. Staggs filed a motion for reconsideration of the March 2010 Board decision, stating that he was told by VA representatives that he had been "granted benefits for an earlier effective date of 1993 because of new evidence with a date of 7/30/2008." R. at 622-24. In support, he submitted a copy of the VACOLS screenshot. R. at 617. He also stated that he should be entitled to an effective date of February 24, 1994, for his award of benefits based on the medical diagnosis from that month and the same doctor's July 2005 letter confirming that diagnosis. *Id.* The Board Chairman denied reconsideration in August 2010. R. at 604-05.

Mr. Staggs appealed the Board's decision to the Court, and the Court affirmed in the decision in January 2012. *See Staggs v. Shinseki*, No. 10-2806, 2012 U.S. App. Vet. Claims LEXIS 154 (Jan. 27, 2012) (en banc). The Court determined that Mr. Staggs did not appeal the effective

date assigned for his benefits for PTSD until June 2004 and affirmed the Board's holding that that issue was therefore not properly on appeal, because Mr. Staggs had not challenged the matter on the basis of CUE. *Id.*

In July and August 2012, Mr. Staggs submitted statements seeking revision of the December 2002 RO decision on the basis of CUE. R. at 537-84. Mr. Staggs argued that there were errors in several VA decisions, including the March 1994 decision and the May 2006 Supplemental SOC. R. at 568-76. He also continued to argue that the July 2008 VACOLS entry established his entitlement to benefits from 1993. *Id.* The RO denied Mr. Staggs's motion for revision of the December 2002 decision. R. at 378-85. Mr. Staggs continued to submit statements and documents supporting his CUE arguments and appealed to the Board. R. at 348-58, 82-90.

On July 6, 2017, the Board issued the decision on appeal. R. at 5-11. The Board discussed the procedural history of Mr. Staggs's PTSD claim, noting that the effective date assigned in December 2002 became final because he did not appeal that issue. R. at 8-9. The Board also declined to revise the December 2002 on the basis of CUE. R. at 9-10. The Board stated that the February 1994 letter from Mr. Staggs's physician was previously considered and found not sufficient to diagnose PTSD. R. at 9. The Board also noted that Mr. Staggs could not challenge any RO decision before he unsuccessfully appealed the May 1996 Board decision, which the Court affirmed. *Id.*

Following the Board's decision, Mr. Staggs filed a motion for reconsideration. The Board Chairman denied the motion in February 2019 after finding that Mr. Staggs had simply asserted the same arguments and had failed to demonstrate that the July 2017 decision contained an obvious error of fact or law. R. at 2.

On appeal, Mr. Staggs argues that the Board erred by rejecting the July 2008 VACOLS screenshot, the December 2008 letter from Ms. Peake, and a November 2008 VACOLS appealed issues list that repeated the information contained in the July 2008 VACOLS entry, *see* R. at 617, 710, 733. He argues that this evidence demonstrates that VA determined that he had a diagnosis of PTSD prior to March 11, 2000. He argues that he never received the benefits that were awarded in July 2008. He asks the Court to honor the effective date previously granted by VA. Attached to his brief, Mr. Staggs submitted a statement reiterating that he had repeatedly submitted new evidence, including the December 2008 letter from Ms. Peake and the July 2008 VACOLS entry.

He argues that this evidence was never properly recognized. He also lists documents showing that he was diagnosed with PTSD prior to March 11, 2000.

The Secretary responds that the Board correctly determined that Mr. Staggs had failed to demonstrate CUE in the December 2002 decision. The Secretary states that the July 2008 VACOLS entry is irrelevant and that the Board did not err in failing to consider it. The Secretary states that VACOLS is an internal software program that VA uses to track appeals and is not part of the adjudication process itself. The Secretary states that a VACOLS entry cannot award a veteran benefits. The Secretary also states that the July 2008 VACOLS entry and SOC cannot demonstrate CUE in the December 2002 decision. The Secretary notes that, to the extent Mr. Staggs refers to or makes arguments concerning the Board Chairman's denial of reconsideration, that matter is not before the Court for review.

II. ANALYSIS

Initially, the Court notes that the only matter before the Court for review is the July 2017 Board decision. *See* 38 U.S.C. §§ 7252(a), 7266(a). Mr. Staggs refers to the denial of his motion for reconsideration in his brief. However, as Mr. Staggs acknowledges, his motion for reconsideration was based on evidence that had previously been submitted. *Romero v. Brown*, 6 Vet.App. 410, 412 (1994). Thus, the Court lacks jurisdiction to review the February 2019 Board Chairman's denial of reconsideration. *See Mayer v. Brown*, 37 F.3d 618 (Fed. Cir. 1994); *Bennett v. Brown*, 10 Vet.App. 178, 181 (1997).

A CUE motion is a collateral attack on a final RO or Board decision. *Disabled Am. Veterans v. Gober*, 234 F.3d 682, 696-98 (Fed. Cir. 2000). CUE is established when the following conditions are met: First, either (1) the correct facts in the record were not before the adjudicator, or (2) the statutory or regulatory provisions in existence at the time were incorrectly applied. *Damrel v. Brown*, 6 Vet.App. 242, 245 (1994). Second, the alleged error must be "undebatable," not merely "a disagreement as to how the facts were weighed or evaluated." *Russell v. Principi*, 3 Vet.App. 310, 313-14 (1992) (en banc). Finally, the alleged error must have "manifestly changed the outcome" of the decision being attacked on the basis of CUE at the time that decision was rendered. *Id.*; *see Bustos v. West*, 179 F.3d 1378, 1380 (Fed. Cir. 1999); *see also King v. Shinseki*, 26 Vet.App. 433, 442 (2014) ("Whether it is reasonable to conclude that the outcome would have

been different is not the standard that must be met for a motion alleging [CUE] to succeed. The governing law requires that the error be 'undebatable' and that the commission of the alleged error must have 'manifestly changed the outcome' of the decision." (quoting *Russell*, 3 Vet.App. at 313-14)).

"CUE is a very specific and rare kind of 'error' . . . of fact or law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error." *Fugo v. Brown*, 6 Vet.App. 40, 43 (1993). "[I]f it is not absolutely clear that a different result would have ensued," based upon the facts and law that were understood at the time of the decision, then any error that may have occurred in a final Board or RO decision is not clear and unmistakable. *Id.* at 44. The Court's review of the Board's determination on the existence of CUE is limited to whether that conclusion was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law" or unsupported by adequate reasons or bases. 38 U.S.C. § 7261(a)(3); *Russell*, 3 Vet.App. at 315.

In rendering its decision, the Board is required to provide a written statement of reasons or bases for its findings and conclusions on all material issues of fact and law presented on the record. 38 U.S.C. § 7104(d)(1). The statement must be adequate to enable a claimant to understand the precise basis for the Board's decision and to facilitate review in this Court. *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990). 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 rejecting any 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).

Because Mr. Staggs is proceeding pro se, the Court sympathetically reads his pleadings. *See De Perez v. Derwinski*, 2 Vet.App. 85, 86 (1992). Mr. Staggs does not raise any error with the Board's finding that the December 2002 RO decision did not contain CUE. To the extent that he mentions that he was diagnosed with PTSD prior to March 11, 2000, that evidence was considered by the Board and the Board found that Mr. Staggs's arguments were no more than a disagreement with how the facts were weighed, which cannot constitute CUE. *Russell*, 3 Vet.App. at 313-14. The Court discerns no error with the Board's decision on that matter. *Id.* at 315.

Mr. Staggs's argument before the Court focuses on the July 2008 VACOLS entry and his belief that he was granted benefits for PTSD from 1993 based on that entry. The Board did not

expressly discuss this argument, but noted that Mr. Staggs had made several arguments that could not form the basis of a CUE motion. While the Board could have addressed Mr. Staggs's argument directly for clarity, the Court finds that any failure to do so was not prejudicial to this appeal. *See* 38 U.S.C. § 7261(b)(2) (requiring that the Court must "take due account of the rule of prejudicial error"); *see also Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

Mr. Staggs's argument regarding the July 2008 VACOLS entry is not a CUE allegation concerning the December 2002 RO decision. *See Fugo*, 6 Vet.App. at 43. Further, Mr. Staggs has repeatedly been informed that he was not granted an earlier effective date for benefits for PTSD in July 2008. As the Secretary argues, VACOLS is a tracking system and does not confer an award of benefits. The only decision issued in July 2008 was the SOC denying Mr. Staggs higher disability ratings and earlier effective dates for PTSD. R. at 789. The VACOLS entry reflecting that benefits were granted in the July 2008 SOC was apparently made in error. Contrary to Mr. Staggs's assertions, that entry and related entries and letters, including the letter from Ms. Peake, do not reflect an award of an earlier effective date for PTSD benefits.

Because the Board did not err in finding that the December 2002 RO decision did not contain CUE, and because Mr. Staggs has failed to demonstrate any prejudicial error with the Board's decision, the Court will affirm that decision on appeal. *See Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (holding that the appellant has the burden of demonstrating error), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table); *Berger v. Brown*, 10 Vet.App. 166, 169 (1997) (the appellant "always bears the burden of persuasion on appeals").

III. CONCLUSION

Upon consideration of the foregoing analysis, the record of proceedings before the Court, and the parties' pleadings, the July 6, 2017, Board decision is **AFFIRMED**.

DATED: April 30, 2020

Copies to:

Sam Ray Staggs

VA General Counsel (027)