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

No. 19-2657

ANGELA M. MITCHELL, APPELLANT,

v.

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

Before SCHOELEN, *Senior Judge*.<sup>1</sup>

**MEMORANDUM DECISION**

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

SCHOELEN, *Senior Judge*: The appellant, Angela M. Mitchell, through counsel, appeals a December 20, 2018, Board of Veterans' Appeals (Board) decision that denied service connection for headaches and remanded service-connection claims for chronic fatigue syndrome, hypertension, ulcers, pulmonary embolism, an acquired psychiatric disorder, uterine cysts, hysterectomy, endometriosis, pes planus, and sinusitis/rhinitis. Record of Proceedings (R.) at 5-19. The remanded matters are not before the Court. *See Hampton v. Gober*, 10 Vet.App. 481, 483 (1997) (holding that where "a final decision has not been issued by the [Board] with respect to the claims that were remanded, those claims cannot be reviewed by the Court on this appeal"). Because the Board failed to provide adequate reasons or bases for its decision, the Court will vacate the December 2018 Board decision denying service connection for headaches and remand the matter for further adjudication consistent with this decision.

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<sup>1</sup> Judge Schoelen is a Senior Judge acting in recall status. *In re: Recall of Retired Judge*, U.S. VET. APP. MISC. ORDER 04-20 (Jan. 2, 2020).

## **I. BACKGROUND**

The appellant served on active duty in the U.S. Navy from February 1988 to February 1993. R. at 1720. On October 2, 2015, she filed a claim for service connection for headaches, and service connection for a sleep disorder that is not presently before the Court. R. at 1496. With her claim, she submitted supporting medical records showing diagnosis of and treatment for migraine headaches with symptoms of pain, nausea, and dizziness since April 2005. R. at 1822-30. The appellant's physician encouraged her to keep a headache diary and prescribed medications to treat her headaches. R. at 1824, 1830. The appellant also submitted a medical treatise article entitled "Reliving Trauma – Post Traumatic Stress Disorder," published by the National Institutes of Health in 2001. R. at 1679-81. In pertinent part, the article stated: "[P]hysical symptoms such as headaches . . . are common in people with PTSD. Often, doctors treat these symptoms without being aware that they stem from an anxiety disorder." R. at 1679.

In a November 23, 2015, rating decision, the regional office (RO) denied service connection for headaches, stating that although the appellant had a current diagnosis, there was no evidence of headaches during her military service and no objective evidence linking the disability to active military service. R. at 1423-25. The appellant filed a Notice of Disagreement, which was received by VA on December 21, 2015. R. at 1388-96. She submitted additional evidence in support of the appeal to include her own lay statement, a buddy statement, and medical records. R. at 978. The RO obtained VA treatment records and issued a Statement of the Case on December 22, 2016, continuing to deny service connection for headaches. R. at 978.

On January 3, 2017, the appellant filed a Substantive Appeal, requesting service connection for headaches on a direct and secondary basis. R. at 954. The RO added VA medical records from 2013 through 2017 to the veteran's claims file, which show ongoing treatment for headaches. R. at 31-35, 321-43, 547-51. The appellant submitted additional VA medical records to include a polysomnography report noting morning headaches. R. at 257-59.

In the December 20, 2018, decision here on appeal, the Board denied service connection for headaches, finding that "evidence does not suggest that the [appellant's] migraine headache disorder is related to the treatment of any of the [appellant's] other claimed medical conditions." R. at 8. This appeal followed.

## II. ANALYSIS

Before deciding a claim, the Board is required to consider all relevant evidence of record and to consider and discuss in its decision all "potentially applicable" provisions of law and regulation. *Schafrath v. Derwinski*, 1 Vet.App. 589, 593 (1991); *see* 38 U.S.C. § 7104(a); *Weaver v. Principi*, 14 Vet.App. 301, 302 (2001) (per curiam order). The Board must provide a statement of the reasons or bases for its determination, adequate to enable an appellant to understand the precise basis for its decision, as well as to facilitate review in this Court. 38 U.S.C. § 7104(d)(1); *see Allday v. Brown*, 7 Vet.App. 517, 527 (1995); *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990). To comply with this requirement, the Board must analyze the credibility and probative value of the evidence, account for the evidence it finds persuasive or unpersuasive, and provide the reasons for its rejection of 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).

The appellant argues that the Board failed to provide adequate reasons or bases for denying service connection for headaches. Appellant's Brief (Br.) at 1. Specifically, the appellant asserts that VA ignored favorable evidence showing that her headaches were caused or aggravated by her other medical disabilities of record, or by medications taken for those disabilities. *Id.* at 4-6 (citing R. at 31-35, 257-59, 321-23, 330-43, 547-51, 1822-24, 1828-30, 2171). Because the Board remanded the appellant's service-connection claims for those disabilities, she avers that this Court should remand the issue of service connection for headaches as inextricably intertwined with her other remanded claims. Appellant's Br. at 7-8.

The Secretary counters that the Board provided adequate reasons or bases to deny the appellant service connection for headaches. Secretary's Br. at 3. The Secretary responds that the Board did not need to discuss all pieces of evidence in the record, and that overall, the appellant failed to demonstrate that the Board overlooked evidence, misapplied the law, or otherwise did not plausibly analyze the evidence. *Id.* at 3, 7.

In the decision on appeal, the Board denied the appellant's service-connection claim for headaches. R. at 8-9. The Board stated that treatment records have indicated the presence of migraine headaches since 2005, but that the "evidence does not suggest that the [appellant's] migraine headache disorder is related to the treatment of any of the [appellant's] other claimed medical conditions." R. at 8. The Board also noted that the appellant's service treatment records were negative for complaints of headaches. *Id.* The Board thus concluded that the preponderance

of the evidence is against service connection for headaches because there is no probative medical evidence indicating that the appellant's headaches were incurred during service. *Id.* at 8-9.

The Court agrees with the appellant that the Board's terse statement frustrates judicial review. Specifically, the Board failed to discuss evidence of record that is potentially favorable to the appellant, including a medical treatise article and several medical records showing treatment for migraines coincident with treatment for other remanded issues, to include insomnia, a psychiatric condition, and hysterectomy residuals (R. at 257-59, 321-23, 330-43, 547-51, 1679-81, 1822-24, 1828-30, 2171). The medical treatise article shows a possible causal relationship between headaches and the remanded service-connection claim for an acquired psychiatric disorder. R. at 1679. Because of the lack of reasons or bases in the Board's decision, it is unclear whether or how the evidence was weighed with respect to the appellant's headaches, and it is the Board's duty to assess the weight and credibility of the evidence in the first instance, not this Court's. *Deloach v. Shinseki*, 704 F.3d 1370, 1380 (Fed. Cir. 2013); *see Elkins v. Gober*, 229 F.3d 1369, 1377 (Fed. Cir. 2000); *see also Owens v. Brown*, 7 Vet.App. 429, 433 (1995).

The Secretary offers several reasons why the Board may not have discussed the evidence mentioned by appellant. Secretary's Brief at 3-10. This attempt at post hoc rationalization by the Secretary does not cure the Board's failure to provide adequate reasons or bases for its decision. *Simmons v. Wilkie*, 30 Vet.App. 267, 277 (2018) (holding that the "Court cannot accept the Secretary's post-hoc rationalizations" to cure the Board's reasons-or-bases errors). The Court concludes that the Board's analysis is inadequate, prevents the appellant from understanding the precise basis for its adverse decision, and frustrates judicial review. *See* 38 U.S.C. § 7104(d)(1); *Allday*, 7 Vet.App. at 527; *Gilbert*, 1 Vet.App. at 56-57. Accordingly, the claim must be remanded. *See Tucker v. West*, 11 Vet.App. 369, 374 (1998) (holding that remand is the appropriate remedy "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").

Given this disposition, the Court will not address the other arguments and issues raised by the appellant. *See Best v. Principi*, 15 Vet.App. 18, 20 (2001) (per curiam order) (holding that "[a] narrow decision preserves for the appellant an opportunity to argue those claimed errors before the Board at the readjudication, and, of course, before this Court in an appeal, should the Board rule against him"). However, the Court agrees with the appellant that if the Board finds an indication of an association between the veteran's headaches and one or more claims which have not yet been

finally decided, the appropriate remedy is to treat the issues as inextricably intertwined. *See Henderson v. West*, 12 Vet.App. 11, 20 (1998) ("[W]here a decision on one issue would have a 'significant impact' upon another, and that impact in turn 'could render any review by this Court of the decision [on the other claim] meaningless and a waste of judicial resources,' the two claims are inextricably intertwined." (quoting *Harris v. Derwinski*, 1 Vet.App. 180, 183 (1991))). The appellant is free on remand to submit additional evidence and argument, including the arguments raised in her briefs to this Court, 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.

### **III. CONCLUSION**

After consideration of the appellant's and the Secretary's pleadings, and after a review of the record, the Board's December 20, 2018, decision is VACATED and the matter is REMANDED for further proceedings consistent with this decision.

DATED: May 1, 2020

Copies to:

Stephani M. Bennett, Esq.

VA General Counsel (027)