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

No. 19-1741

KENNEDY K. DECREE, APPELLANT,

v.

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

Before FALVEY, *Judge*.

**MEMORANDUM DECISION**

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

FALVEY, *Judge*: Army veteran Kennedy K. Decree appeals through counsel a December 11, 2018, Board of Veterans' Appeals decision that denied service connection for a left ankle disability.<sup>1</sup> The appeal is timely, the Court has jurisdiction to review the Board decision, and single-judge disposition is appropriate. *See* 38 U.S.C. §§ 7252(a), 7266(a); *Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990).

We are asked to decide whether the Board erred in relying on an inadequate VA examination, finding that the duty to assist was satisfied, and failing to provide adequate reasons or bases for its determination. Because the November 2014 VA examination is adequate, the duty to assist was satisfied, and the Board's statement of reasons or bases is understandable and facilitates judicial review, and because Mr. Decree fails to otherwise demonstrate prejudicial error, we will affirm the Board's December 2018 decision.

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<sup>1</sup> The Board also granted service connection for hypertension. We may not overturn this favorable finding. *See* U.S.C. § 7261(a)(4) (only a "finding of material fact adverse to the claimant" may be overturned if clearly erroneous); *Medrano v. Nicholson*, 21 Vet.App. 165, 170-71 (2007) (noting that the Court is not permitted to reverse the Board's favorable findings of fact).

## **I. BACKGROUND**

Mr. Decree served on active duty from 1982 to 2002. Record (R.) at 380. An August 1998 service treatment record (STR) notes a diagnosis of left ankle degenerative joint disease (DJD) secondary to a sprain during service. R. at 220-21. An undated service STR notes a complaint of a painful swollen ankle in 1996. R. at 368. At discharge, the veteran reported numerous injuries incurred during service such as a head injury, left shoulder pain, hemorrhoids, arthritis, and swollen or painful joints. R. at 356.

In August 2010, the veteran filed a claim for service connection for left ankle DJD. R. at 690-93. In a November 2010 statement, he indicated that he injured his left ankle during recruiter's school and stated that it was documented in his STRs. R. at 641. In a March 2011 rating decision, a regional office (RO) denied service connection for left ankle DJD, stating that the records failed to indicate a permanent residual or chronic disability, R. at 611-13; and in September 2011, the veteran filed a Notice of Disagreement, R. at 605.

At a November 2014 VA examination, the examiner noted that the veteran was diagnosed with chronic/recurrent ligament sprain that originated in August 1998. R. at 418. The examiner noted that the veteran had injured his left ankle several times in service while jumping from a tank, but that no x-rays were taken at the time of the injuries. R. at 417. The veteran reported that he had stepped in a hole and sought medical treatment, and that he experienced intermittent pain in his left ankle for the last four years of service. R. at 418-19. The veteran also reported that his ankle pain flares up, particularly at work, and that he must sit down for 15-20 minutes to relieve the pain. R. at 419. The examiner opined that it was less than likely that the veteran's current ankle sprain and pain were caused by service because "the August 26, 1998, comment regarding [DJD] has no x-ray evidence to support it [and] the current x-ray does not support [a diagnosis] of [DJD]." R. at 427. The examiner noted that the service records before and after August 26, 1998, do not indicate any ankle problems. *Id.* He also noted that at the time of separation, the veteran's left ankle sprain had resolved. *Id.*

In December 2014, the RO issued a Statement of the Case (SOC) continuing to deny the claim, R. at 385-416; and in November 2018, Mr. Decree perfected his appeal; R. at 13. In December 2018, the Board issued the decision on appeal, denying service connection as to a left ankle disability. This appeal followed.

## II. ANALYSIS

Mr. Decree argues that the Board erred because it (1) relied on an inadequate November 2014 VA examination, where the examiner failed to discuss the veteran's ankle condition during and after service; (2) found that the duty to assist was satisfied, where VA failed to obtain a 2014 x-ray; and (3) provided inadequate reasons or bases for its determination. Appellant's Brief (Br.) at 5.

### A. Examination Adequacy

The duty to assist includes the duty to obtain an adequate medical examination. *Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007). A VA medical examination or opinion is adequate "where it is based upon consideration of the veteran's prior medical history and examinations," *id.* and "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)). A medical examination that is based on an inaccurate factual premise lacks probative value. *Reonal v. Brown*, 5 Vet.App. 458, 461 (1993). However, there is "no requirement that a medical examiner comment on every favorable piece of evidence in a claims file"; rather, examination reports are adequate so long as they "sufficiently inform 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).

We review for clear error the Board's determinations that an examination is adequate and that the duty to assist has been met. *D'Aries v. Peake*, 22 Vet.App. 97, 104 (2008) (whether a medical examination is adequate is a finding of fact); *Nolen v. Gober*, 14 Vet.App. 183, 184 (2000) (whether the Secretary has fulfilled his duty to assist generally is a finding of fact that the Court reviews under the "clearly erroneous" standard of review); *see also Gilbert v. Derwinski*, 1 Vet.App. 49, 52 (1990) ("A 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." (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948))).

Mr. Decree fails to demonstrate that the examiner's discussion rendered the examination inadequate and that the Board clearly erred in relying on it. The examiner, who is not subject to a reasons-or-bases requirement, need only provide an explanation that connects the facts to the

examiner's conclusion with enough detail to fully inform the Board's decision. *See Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008). Here, the November 2014 examiner noted that he had reviewed the veteran's STRs and x-rays. He also specifically noted the veteran's in-service injuries sustained when he jumped from a tank and that he experienced intermittent pain since that time, particularly while at work. R. at 419. Thus, contrary to the veteran's argument, the examiner considered the veteran's injuries during and after service, but concluded that his left ankle condition was less than likely caused by service because his medical records during and after service did not indicate ankle problems. R. at 427. We find that the examiner's explanation is specific enough to fully inform the Board's decision and that the Board did not clearly err in finding that the opinion was adequate or that the duty to assist had been met. *See D'Aries*, 22 Vet.App. at 104; *Nolen*, 14 Vet.App. at 184; *Ardison*, 6 Vet.App. at 407.

Although the veteran argues that there are inconsistencies in the examiner's opinion because, on the one hand, the examiner noted that the veteran was diagnosed with chronic/recurrent left ankle sprain in August 1998, while, on the other, opined that the veteran's condition is not related to service, Appellant's Br. at 7, we find this argument unpersuasive. Statements in a medical examination must be read in the context of the examination "as a whole," *Monzingo*, 26 Vet.App. at 105, and the examiner here noted that the veteran's STRs indicated that he had previously been diagnosed with a left ankle sprain in August 1998, but that his condition had resolved at the time of discharge in February 2002 and that his separation examination was normal. R. at 427. Thus, the veteran does not demonstrate that, in view of the entire record, the Board clearly erred in finding that the examination was adequate or the duty to assist was met. *See D'Aries*, 22 Vet.App. at 104; *Nolen*, 14 Vet.App. at 184; *Dyment*, 13 Vet.App. at 147.

#### B. Duty to Assist

Mr. Decree argues that the Board erred in finding that the duty to assist had been met because VA failed to obtain a left ankle x-ray, which is not of record but which was relied upon by the 2014 examiner. Appellant's Br. at 8.

The duty to assist requires VA to "make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate [his or her] claim," including obtaining VA records. 38 U.S.C. § 5103A(c)(1); 38 C.F.R. § 3.159(c) (2019). A review of the record indicates that the November 2014 x-ray is not present, but we nevertheless find that the veteran fails to demonstrate prejudicial

error. *See Simmons v. Wilkie*, 30 Vet.App. 267, 280 (2018) (the Court takes due account of prejudicial error).

Here, the examiner specifically reviewed and considered the x-ray, stating that the left ankle was "essentially normal," R. at 425, and did not support a finding of DJD, R. at 427. Thus, we find that the veteran fails to demonstrate prejudicial error where it is clear that the November 2014 examiner otherwise reviewed and considered the x-ray. *See Simmons*, 30 Vet.App. at 280.

### C. Reasons or Bases

Mr. Decree argues that the Board failed to adequately explain why it found that the in-service DJD diagnosis was not probative to support a finding of an in-service related injury for his ankle pain. Appellant's Br. at 9-10.

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 decisions and facilitate review in this Court. *Gilbert*, 1 Vet.App. at 57. To comply with this requirement, the Board must analyze the credibility and probative value of the 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).

Mr. Decree fails to demonstrate that the Board inadequately explained its determination that his left ankle disability was not caused by service despite an in-service DJD diagnosis. Here, the Board found that, although the veteran is not currently diagnosed with a left ankle disability, the record reflects that he has left ankle pain with functional impairment, which is a disability for VA purposes. R. at 6. However, the Board found that the preponderance of the evidence weighed against a finding that the veteran's current ankle disability was caused by service. *Id.* To draw this conclusion, the Board accorded significant probative value to the November 2014 VA examination, which found that the in-service injuries had resolved because medical records did not indicate any ankle problems after August 1998 and because his February 2002 separation examination was normal. R. at 7. The Board also discussed the veteran's lay statement that he experienced ankle pain until discharge, but explained that this statement was contradicted by the veteran not reporting any left ankle pain at separation. *Id.* It appears then that the Board does not dispute an in-service injury, but rather that the in-service diagnosis of DJD was not related to his

current condition. We find that this lack of nexus explanation is understandable and facilitates judicial review. *See Allday*, 7 Vet.App. at 527.

To the extent that the veteran vaguely hypothesizes that the STRs are incomplete, Appellant's Br. at 10, without more, we find this contention too vague or unsupported by a coherent argument to permit judicial review. *See Evans v. West*, 12 Vet.App. 22, 31 (1998) (the Court will give no consideration to a "vague assertion" or an "unsupported contention").

### **III. CONCLUSION**

Upon consideration of the foregoing, the December 11, 2018, Board decision is AFFIRMED.

DATED: May 5, 2020

Copies to:

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