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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-2384

ROY C. HAMPTON, JR., 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 Roy C. Hampton, Jr., who is self-represented, appeals a February 1, 2019, Board of Veterans' Appeals decision that denied a rating greater than 30% for an acquired psychiatric disability and entitlement to a total disability rating based on individual unemployability (TDIU). 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).

As the Secretary concedes, because the Board failed to provide an adequate statement of reasons or bases for denying a rating greater than 30% for a psychiatric disorder, and because the TDIU claim is inextricably intertwined with the psychiatric claim, we will set aside the February 2019 Board decision and remand the matters for further proceedings.

I. ANALYSIS

A psychiatric disability is evaluated under the general rating formula for mental disorders. 38 C.F.R. § 4.130, DC 9411 (2019). A 30% disability rating is assigned for

[o]ccupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due

to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events).

Id.

For a veteran to be entitled to a disability rating of 50%, a mental disorder must manifest with

[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.

Id.

For the veteran to be entitled to a 70% disability rating, the evidence must show

[o]ccupational and social impairment, with deficiencies in most area, 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.

As with any finding on a material issue of fact and law presented on the record, the Board must support its degree-of-disability determination with an adequate statement of reasons or bases that enables the claimant to understand the precise basis for that determination and facilitates review in this Court. 38 U.S.C. § 7104(d)(1); *Gilbert v. Derwinski*, 1 Vet.App. 49, 56-57 (1990); *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); *Allday v. Brown*, 1 Vet.App. 517, 527 (1995).

The Court agrees with the parties that the Board provided inadequate reasons or bases. In the decision on appeal, the Board listed the criteria for a 50% rating, but conclusively found that the veteran's symptoms did not more nearly approximate social and occupational impairment with reduced reliability and productivity associated with a 50% rating. Record (R.) at 12. As the Secretary points out, Secretary's Brief (Br.) at 6, the Board failed to specifically explain why the veteran's symptoms did not more nearly approximate a 50% rating, R. at 7. Because these deficiencies impede Mr. Hampton's ability to understand the precise bases for the Board's decision and meaningful review by this Court, the Board's statement of reasons or bases is inadequate, and remand is appropriate. *See Allday*, 7 Vet.App. at 527; *see also Tucker v. West*, 11 Vet.App. 369, 374 (1998).

We also agree with the Secretary that remand is appropriate for the TDIU claim because it is inextricably intertwined with the remanded psychiatric claim. Secretary's Br. at 7; *see Harris v. Derwinski*, 1 Vet.App. 180, 183 (1991) (for judicial review purposes, a matter is considered inextricably intertwined with another matter when a decision on one matter would have a significant effect on the other matter, such that separate judicial review of the second matter could be rendered "meaningless and a waste of judicial resources"); *see also Ephraim v. Brown*, 5 Vet.App. 549, 550 (1993) (inextricably intertwined claims should be remanded together).

In pursuing these claims on remand, the veteran will be free to submit additional argument and evidence, *see Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order); *see also Clark v. O'Rourke*, 30 Vet.App. 92, 97 (2018) (appellant has 90 days, from the date of the postremand notice VA provides, to submit additional evidence), and the Board must consider any such evidence or argument submitted, *see Kay v. Principi*, 16 Vet.App. 529, 534 (2002); *see also* 38 U.S.C. § 7112 (a remand must be performed in an expeditious manner); *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991) ("A remand is meant to entail a critical examination of the justification for the decision.").

II. CONCLUSION

On consideration of the foregoing, the Board's February 1, 2019, decision is SET ASIDE and the matters are REMANDED for further adjudication consistent with this decision.

DATED: May 7, 2020

Copies to:

Roy C. Hampton, Jr.

VA General Counsel (027)