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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-4436

ANDREW W. TODD, APPELLANT,

V.

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

Before MEREDITH, *Judge*.

MEMORANDUM DECISION

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

MEREDITH, *Judge*: The pro se appellant, Andrew W. Todd, appeals a September 6, 2018, Board of Veterans' Appeals (Board) decision that denied entitlement to disability compensation for an acquired psychiatric disability. Record (R.) at 3-11. 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. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the following reasons, the Court will affirm the Board's decision.

I. BACKGROUND

The appellant served on active duty in the U.S. Navy from February to May 1980, with Reserve service from August 1979 to August 1985. R. at 968, 986. He filed a claim for disability compensation in June 2002 for an acquired psychiatric condition, claimed as depression and anxiety, and asserted that it began in 1984 and that he felt depression throughout his military service. R. at 1462-74. A VA regional office (RO) denied his claim in July 2003, finding that "there is no evidence showing that this condition [was] incurred in or was aggravated by any active duty service." R. at 1187-88. Several years later, the appellant submitted a statement in support of his claim asserting that he was enclosing additional medical records, R. at 1178; the RO treated

the submission as a request to reopen his previously denied claim and declined to reopen, R. at 1026-30. The RO received another statement from the appellant in September 2008, R. at 993-94; the RO again treated the statement as a new request to reopen his previously denied claim and declined to reopen it in March 2009, R. at 858-60, 985.

The RO notified the appellant in May 2009 that it would interpret his recent statement regarding treatment as a request to reconsider its March 2009 denial, R. at 848-49, and continued to decline to reopen his claim, R. at 603-07. He appealed the rating decision, R. at 586-88, 591-94; the RO issued a Statement of the Case, R. at 550-62; and he perfected his appeal, R. at 547-48. In January 2017, the Board reopened and remanded the matter based on the statements of the appellant and his mother from 2008, 2009, and 2011. R. at 465-74. The RO subsequently issued a Supplemental Statement of the Case denying the claim. R. at 20-33.

The Board issued the decision on appeal on September 6, 2018, finding that no link exists between the appellant's current psychiatric disability and service because "there is no injury, disease, or event to which a current disorder could be related," and, thus, denied his claim. R. at 8; *see* R. at 3-11. This appeal followed.

II. ANALYSIS

In his informal brief, which the Court construes liberally, *see De Perez v. Derwinski*, 2 Vet.App. 85, 86 (1992), the appellant raises no specific arguments regarding the Board's decision. Instead, he notes that he has "been seeing [d]octors and [c]ounselors for 25 years, [he] does[not] seem to qualify for VA [b]enefits," there are documents that support his claim but he did not have the documents when he completed his informal brief, and there is "evidence that [he has] been disabled from being in the military." Appellant's Informal Brief (Br.) at 1-3. He further suggests that the Court could "ask [him] to get more letters from anybody that has known [him] before, during, and after enlistment in the military." Appellant's Informal Br. at 3. The Secretary contends that the appellant has not carried his burden of sufficiently alleging error and urges the Court to affirm the Board decision. Secretary's Br. at 4-14.

On appeal to this Court, the appellant "always bears the burden of persuasion." *Berger v. Brown*, 10 Vet.App. 166, 169 (1997); *see Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table). Here, the appellant raises no specific argument contesting any aspect of the Board's decision. *See Coker v. Nicholson*, 19 Vet.App. 439,

442 (2006) (per curiam) ("The Court requires that an appellant plead with some particularity the allegation of error so that the Court is able to review and assess the validity of the appellant's arguments."), *vacated on other grounds sub nom. Coker v. Peake*, 310 F. App'x 371 (Fed. Cir. 2008) (per curiam order); *see also Locklear v. Nicholson*, 20 Vet.App. 410, 416 (2006) (Court unable to find error when arguments are undeveloped). Although, as noted above, the Court liberally construes arguments made by pro se appellants, *De Perez*, 2 Vet.App. at 86, they must nevertheless raise specific arguments demonstrating perceived Board error, *see Coker*, 19 Vet.App. at 442 (citing *Hernandez v. Starbuck*, 69 F.3d 1089, 1093 (10th Cir. 1995) (holding that the appellant, who comes to the court of appeals as the challenger of the underlying decision, "bears the burden of demonstrating the alleged error and the precise relief sought" and, where the appellant fails to meet this burden, the "court of appeals is not required to manufacture" the appellant's argument)).

As an initial matter, to the extent that the appellant suggests that the Court could ask him to obtain statements from those who knew him while on active duty, Appellant's Informal Br. at 3, the Court notes that it is precluded by statute from considering any material that was not contained in the "record of proceedings before the Secretary and the Board." 38 U.S.C. § 7252(b); *Rogozinski v. Derwinski*, 1 Vet.App. 19, 20 (1990) (holding that review in this Court shall be on the record of proceedings before the Secretary and the Board); *see Kyhn v. Shinseki*, 716 F.3d 572, 577-78 (Fed. Cir. 2013) (holding that the Court is not permitted to consider extrarecord evidence). Further, the appellant's general disagreement with the Board's decision, without argument, is insufficient to demonstrate that the Board's findings were clearly erroneous or otherwise inadequately explained. *See Russo v. Brown*, 9 Vet.App. 46, 50 (1996) (holding that whether the record establishes entitlement to service connection is a finding of fact, which the Court reviews under the "clearly erroneous" standard of review); *see also Allday v. Brown*, 7 Vet.App. 517, 527 (1995) (the Board must provide a statement of the reasons or bases for its determination "adequate to enable a claimant to understand the precise basis for the Board's decision, as well as to facilitate review in this Court"). Thus, the Court will affirm the Board's decision.

III. CONCLUSION

After consideration of the parties' pleadings and a review of the record, the Board's September 6, 2018, decision is AFFIRMED.

DATED: May 8, 2020

Copies to:

Andrew W. Todd

VA General Counsel (027)