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

No. 19-3403

PASQUAL A. OLVERA, 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, Pasqual A. Olvera, appeals a February 15, 2019, Board of Veterans' Appeals (Board) decision denying entitlement to disability compensation for an alcohol abuse disorder. Record (R.) at 3-6. 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. Army from July 1958 to September 1961. R. at 240. In March 2008, he filed a claim for disability compensation for alcoholism, asserting that he became an alcoholic during his military service. R. at 824-33. A VA regional office (RO) denied the claim in July 2008. R. at 723-25, 727-29. Following a request to reopen the claim in January 2018, the RO declined to reopen. R. at 140-49, 158-62. The appellant filed a Notice of Disagreement, R. at 137-38, and subsequently perfected an appeal to the Board, R. at 33-34; *see* R. at 76-106. In February 2019, the Board noted that VA received additional relevant service personnel records after the July 2008 denial and therefore reconsidered the claim pursuant to

38 C.F.R. § 3.156(c). R. at 4. The Board denied the claim, finding that the appellant does not have a current alcohol abuse disorder and that, because alcohol abuse is not a disability for which compensation is payable, the claim must be denied as a matter of law. R. at 3-6. 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 appears to generally disagree with the Board's denial of his claim, asserting that he "had more liquor in the service . . . on top of a bad case of depression," had behavior problems during service, and developed additional medical problems after service. Appellant's Informal Brief (Br.) at 1-2. The Secretary urges the Court to affirm the Board's decision because the Board provided adequate reasons or bases for its decision and the appellant's claim is precluded as a matter of law. Secretary's Br. at 3-5.

Establishing that a disability is service connected for purposes of entitlement to VA disability compensation generally requires medical or, in certain circumstances, lay evidence of (1) a current disability, (2) incurrence or aggravation of a disease or injury in service, and (3) a nexus between the claimed in-service injury or disease and the current disability. *See* 38 U.S.C. § 1110; *Shedden v. Principi*, 381 F.3d 1163, 1166-67 (Fed. Cir. 2004); *see also Davidson v. Shinseki*, 581 F.3d 1313, 1316 (Fed. Cir. 2009); 38 C.F.R. § 3.303 (2019). For claims filed after October 31, 1990, federal law precludes compensation for alcohol or drug abuse on a direct basis. 38 U.S.C. §§ 105(a), 1110; 38 C.F.R. §§ 3.1(m), 3.301(a), (d) (2019). However, the U.S. Court of Appeals for the Federal Circuit held in *Allen v. Principi* that those laws do "not preclude a veteran from receiving compensation for an alcohol or drug abuse disability acquired as secondary to, or as a symptom of, a veteran's service-connected disability." 237 F.3d 1368, 1375 (Fed. Cir. 2001).

In this case, the appellant does not challenge the Board's determination that he did not have a current alcohol abuse diagnosis during the appeal period or that compensation cannot be awarded for alcohol abuse on a direct basis. R. at 5. Further, although he states that he had depression during service, Appellant's Informal Br. at 1, he does not allege that he currently suffers from depression or that he has filed a claim for depression, nor does he assert that his alcohol abuse is secondary to

depression or another alleged service-connected disability. *See Berger v. Brown*, 10 Vet.App. 166, 169 (1997) (On appeal to this Court, the appellant "always bears the burden of persuasion."); *see also Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (holding that the appellant bears the burden of demonstrating error on appeal), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table). Thus, his claim for disability compensation for an alcohol abuse disorder on a direct basis must be denied as a matter of law. *See* 38 U.S.C. §§ 105(a), 1110; 38 C.F.R. §§ 3.1(m), 3.301(a), (d). The Court will therefore affirm the Board's decision denying service connection for an alcohol abuse disorder.

### **III. CONCLUSION**

After consideration of the parties' pleadings and a review of the record, the Board's February 15, 2019, decision is AFFIRMED.

DATED: May 12, 2020

Copies to:

Pasqual A. Olvera

VA General Counsel (027)