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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-0217

CONLEY F. MONK, JR., APPELLANT,

V.

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

Before TOTH, *Judge*.

MEMORANDUM DECISION

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

TOTH, *Judge*: For decades, Conley F. Monk, Jr., was denied veterans benefits because of the status of his discharge from service. In 2012, he launched a two-pronged attack on that status. Initially, he filed with VA a claim to reopen, together with new evidence purporting to show that he was insane while in service and, thus, despite his status, not barred from receiving veterans benefits. A few months later, he filed an application with the Board for Correction of Naval Records (BCNR) to have the status of his discharge upgraded. The BCNR acted first and granted the application. VA then granted benefits and assigned an effective date based solely on the BCNR's actions, without considering his insanity and other VA-related arguments. Mr. Monk appeals, arguing that the Board's failure to consider the arguments he presented deprived him of an earlier effective date and thousands of dollars in benefits.

Because the Board ignored its obligation to consider the arguments expressly raised by Mr. Monk, which could have a material impact on the effective date of his benefits, the Court vacates the December 2018 decision and remands the matters for further proceedings consistent with this opinion. The primary relief Mr. Monk seeks—reversal—is premature, given the Board's failure to make necessary factual findings.

I. BACKGROUND

Mr. Monk served in the Marine Corps from November 1968 to September 1970, including a little over a year in Vietnam. Disciplinary problems began to arise in December 1969. He was cited and administratively punished for several offenses, such as being drunk and disorderly, willfully disobeying a lawful order, threatening a noncommissioned officer, and being absent without leave numerous times. Matters came to a head in August 1970, when three charges were preferred against him: being absent without leave on two separate occasions, attempted theft, and striking a petty officer. Rather than face trial by special court martial, Mr. Monk requested discharge for the good of the service. The request was granted and he received an "undesirable discharge," also called a discharge "under other than honorable conditions." R. at 4403, 4405.

In December 1970, the veteran filed an application for unemployment compensation with a Connecticut state agency, which in turn sought information from VA on the status of his discharge from the Marine Corps. In a March 1971 administrative decision, the regional office cited VA Regulation 1012(D)(4) (now codified at 38 C.F.R. § 3.12(d)(4)), which specified that "benefits are not payable when a veteran is discharged or released from active duty by reason of willful and persistent misconduct." R. at 4401. Given this regulation, and after reviewing service records, VA determined that Mr. Monk's request for discharge for the good of the service rather than stand trial was an admission of guilt of the charges listed. Those facts "substantiate[d] a determination that the veteran was discharged under dishonorable conditions," thereby disentitling him to VA benefits. *Id*. VA relied on this status of discharge determination to deny disability compensation in 1982 for PTSD and again in 2010 for type II diabetes mellitus.

In February 2012, Mr. Monk sought entitlement to VA healthcare and filed (what VA later deemed to be) informal compensation claims for PTSD, diabetes, and diabetic peripheral neuropathy in his arms and legs. R. at 4322. Six months later, these claims were denied for the same reason cited in the previous denials. But this time, the veteran did not let the matter drop. He pursued entitlement to VA benefits through two separate administrative tracks.

First, via the VA route, he submitted in December 2012 a formal compensation claim for PTSD, diabetes, and related disorders. A supporting brief filed along with the application argued that Mr. Monk's status of discharge shouldn't disqualify him from receiving VA benefits because (1) the circumstances of his discharge did not fall under the statutory or regulatory bars on benefits

and (2) in any event, he was "insane" at the time of the actions that led to his discharge.[1] The latter contention was based on a contemporaneously filed report by a psychiatrist, who opined that "Mr. Monk has [a] psychiatric disability that, at the time of the actions leading to his discharge, more likely than not caused a prolonged deviation from his normal behavior; caused him to interfere with the peace of society; and caused him to . . . depart from the accepted standards of the community." R. at 1710. These arguments were reiterated in a timely Notice of Disagreement (NOD) filed in response to VA's August 2012 denial. Second, while pursuing his claims with VA, Mr. Monk submitted a July 2012 request to the BCNR for an upgrade in his discharge status from "under conditions other than honorable" to "honorable" or "general under honorable conditions." R. at 2021.

These parallel proceedings then stalled for some time. VA couldn't proceed without access to the veteran's service records, which had been "checked out" by the BCNR, and the BCNR (for some reason) wasn't issuing a decision. R. at 3877. Finally, in May 2015, the BCNR ordered that Mr. Monk's naval record be corrected by upgrading his discharge to a general discharge under honorable conditions. The "misconduct" that formed the basis of Mr. Monk's discharge, it concluded, "was related to the effects of undiagnosed [PTSD] from which he was suffering at that time" and was "sufficiently mitigated" by that disease to grant the upgrade "as a matter of clemency." R. at 3462.

The following month, VA determined that the BCNR's decision conclusively set aside any bar to benefits based on the status of the veteran's discharge, immediately granted entitlement to VA healthcare, and undertook to grant compensation for any disability shown to be connected to service. It also indicated that, given this change in status, it considered the insanity question and other issues to be "moot." R. at 3460. Thereafter, in September 2015, VA granted service connection for PTSD with a 100% rating, as well as service connection for diabetes and associated peripheral neuropathy with additional 20%, 10%, and 10% ratings. It also awarded special monthly compensation and dependents' educational assistance benefits. All awards were effective July 20, 2012, the date the BCNR received his application.

[1] This brief was prepared by the law school veterans legal services clinic that represents him in the present appeal and has represented him in other proceedings before both this Court and the Federal Circuit. The Court commends the law students involved for their able representation of Mr. Monk.

Mr. Monk disagreed and pursued an appeal to the Board. He argued that the proper effective date for his benefits was February 13, 2012, when he first filed his application with VA. In assigning a July 2012 date—which deprived him of five months of benefits, totaling more than $15,000—the veteran argued that VA failed to address the arguments submitted with his application that supported the earlier effective date, namely, that his original discharge status was not a bar to VA benefits and that, even if it was, he was insane at the time of the conduct underlying the discharge. R. at 1982-95.

In the decision on appeal, the Board likewise denied an effective date prior to July 20, 2012, for all benefits. It relied on subsection (g) of § 3.400, which provides:

> Where entitlement is established because of the correction, change or modification of a military record, or of a discharge or dismissal, by a Board established under 10 U.S.C. § 1552 or 1553, or because of other corrective action by competent military naval, or air authority, the award will be effective from the latest of these dates:
>
> (1) Date application for change, correction, or modification was filed with the service department, in either an original or a disallowed claim;
> (2) Date of receipt of claim if claim was disallowed; or
> (3) One year prior to date of reopening of disallowed claim.

38 C.F.R. § 3.400(g) (2019).[2] The Board determined that Mr. Monk filed his application for an upgrade in discharge status with the BCNR on July 20, 2012. It next determined that the dates his previously disallowed claims were received were January 28, 1982, for PTSD and October 29, 2010, for diabetes and associated neuropathies. Finally, it determined that one year prior to the date it received the (informal) requests to reopen the disallowed claims was February 15, 2011.

[2] The regulation implements 38 U.S.C. § 5110(i), which reads in its entirety as follows:

> Whenever any disallowed claim is readjudicated and thereafter allowed on the basis of new and relevant evidence resulting from the correction of the military records of the proper service department under section 1552 of title 10, or the change, correction, or modification of a discharge or dismissal under section 1553 of title 10, or from other corrective action by competent authority, the effective date of commencement of the benefits so awarded shall be the date on which an application was filed for correction of the military record or for the change, modification, or correction of a discharge or dismissal, as the case may be, or the date such disallowed claim was filed, whichever date is the later, but in no event shall such award of benefits be retroactive for more than one year from the date of readjudication of such disallowed claim. This subsection shall not apply to any application or claim for Government life insurance benefits.

Because the filing of the BCNR application was "the latest of these dates," the Board assigned July 20, 2012, as the effective date for the grant of disability compensation benefits. The same effective date was assigned for special monthly compensation and dependents' educational assistance, since the effective date for these benefits is essentially derivative of that assigned for the compensation awards. The Board did not address any other basis presented by Mr. Monk for lifting the bar on VA benefits or discuss whether an effective date earlier than July 20, 2012, was warranted under other provisions of § 3.400. This appeal followed.

II. ANALYSIS

A.

Mr. Monk does not challenge the Board's findings under subsection (g) of § 3.400. Rather, his main argument is that the Board erred in confining its effective-date analysis to that provision. He contends that the Board breached its duty to address all theories of entitlement presented to it, thereby failing to consider whether there was a basis for an earlier effective date in this case. Specifically, he asserts that the Board ignored his arguments that the status of his discharge was never a proper bar to benefits and that, in any event, the insanity exception permits his receipt of benefits. Either theory, if successful, he maintains, would warrant an effective date for benefits five months earlier than the July 2012 date assigned because they were raised in connection with his claim to reopen, which was filed in February 2012, five months before he filed the application with the BCNR. In response, the Secretary argues that the Board properly considered an effective date only under § 3.400(g) because VA granted benefits—in that provision's terms—"because of the correction, change or modification of . . . a discharge."

Although the procedural posture of this case is not straightforward, the rule of decision is. "The Board is required to adjudicate all issues reasonably raised by the record and, of course, those that are expressly raised." *Skaar v. Wilkie*, 31 Vet.App. 16, 17-18 (2019) (en banc) (internal quotations marks omitted). This includes, where necessary, verifying that VA met its obligation "to develop and adjudicate a claim in a manner that ensures a veteran obtains the maximum benefits allowable in a given context." *Stowers v. Shinseki*, 26 Vet.App. 550, 555 (2014); *see also* 38 C.F.R. § 3.103 (2019) ("[I]t is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government.").

These considerations make resolution of the first issue in this appeal simple. Mr. Monk's claim to reopen clearly presented VA with two alternative arguments for why his discharge status should not be a bar to benefits. And one, the insanity argument, was accompanied by new evidence. Through pure happenstance, VA did not begin to adjudicate the claim until after the BCNR upgraded the status of Mr. Monk's discharge. But that did not relieve VA of its obligation to consider his arguments and undertake any necessary development before making a decision. This derogation of duty could have very real consequences here, for if the veteran's arguments are successful, the effective date of his benefits could be tagged to the February 2012 date VA received his claim to reopen.[3] 38 C.F.R. § 3.400(r). By Mr. Monk's calculations, this five-month difference could translate to more than $15,000 in compensation benefits. Appellant's Br. at 7.

The Board's failure to address the relevant arguments Mr. Monk directed to VA and to make attendant factual findings frustrates the Court's ability to review the propriety of its effective-date determinations. This renders its reasons or bases inadequate. *See Frost v. Shulkin*, 29 Vet.App. 131, 139 (2017). In such circumstances, the proper remedy is generally to vacate and remand for the Board to remedy the deficiency. *See id.* at 140.

B.

The Secretary resists this conclusion, but none of his arguments overcome it. He first contends that § 3.400(g) necessarily controlled the assignment of an effective date since that provision applies to benefits granted "because of" a character of discharge upgrade, and benefits in Mr. Monk's case were clearly granted "because of" the BCNR's decision. This, however, puts the cart before the horse. Both VA and the Board were required to consider the arguments placed squarely in front of them by the veteran before choosing which effective-date provision governed.

The obligation to consider, develop, and adjudicate all issues raised in a claim applies in situations even where entitlement to disability compensation is already established and the "benefit" at issue is an earlier effective date for the award of that compensation. In *Stowers*, for example, the Court concluded that—although the Board had already assigned an effective date under § 3.400 applicable to reopened claims—it was required to discuss (in the circumstances of that case) whether to apply 38 C.F.R. § 3.156(c), which "can establish entitlement to an effective

[3] The parties both cite § 3.400(b)(2)(i), which pertains to the effective date assignable to original compensation claims. Practically, there is no difference, as the effective date in original claims and reopened claims is generally the same: the later of either the date entitlement arose or the date the claim was received.

date as early as the date of the original claim for service connection." 26 Vet.App. at 556. Similarly, in *McGee v. Peake*, 511 F.3d 1352 (Fed. Cir. 2008), the Federal Circuit held that, because it was relevant to a veteran's claim for an earlier effective date for disability compensation, the Board erred in not considering a statutory provision found outside title 38 of the U.S. Code cited by him. The court observed that "VA is required to assist the veteran claimant with fully developing a record"—i.e., "the development of pertinent facts"—"before making a decision on the veteran's claim," as "[t]his fully developed record then forms the basis of a Board decision." *Id*. at 1358.

If the BCNR's upgrade of the status of discharge were the only basis on which Mr. Monk sought disability compensation and related benefits, then the Board would have been correct to limit its analysis to the only relevant effective-date provision. But the veteran advanced multiple arguments for removing the bar to benefits, two of which were exclusively within VA's purview. The Board's silence regarding Mr. Monk's VA-oriented status-of-discharge arguments, and the potential effective date assignable under them, is more probably attributable to oversight than to a considered determination that the BCNR's decision—and hence the effective date corresponding to that action—controls over any determination made by VA. It remains to be seen whether those arguments are meritorious. But, given the principles discussed, when multiple arguments for removing a bar on benefits are presented to VA and the Board, the Secretary hasn't offered any reasons why the Agency can address one and ignore the others, especially when the other arguments could result in an earlier effective date.

Next, the Secretary asserts that the Board was not obliged to consider Mr. Monk's insanity argument because that issue was not properly before it. He acknowledges that, if a veteran was insane at the time of the offenses leading to discharge, that insanity removes any statutory or regulatory bar to VA benefits based on the veteran's discharge status. *See* 38 U.S.C. § 5303(b); 38 C.F.R. § 3.12(b) (2019). But if Mr. Monk wanted to put that issue up for Board review, the Secretary contends, he should have appealed a June 2015 regional office administrative decision. This decision found that VA benefits were no longer barred after the BCNR upgraded the status of Mr. Monk's discharge. The letter covering the decision commented that "[t]he issue of the claimant's sanity is NOT involved." R. at 3408. The Secretary characterizes this as some sort of negative "factual determination" regarding insanity and asserts that, if the veteran demurred, he should have filed an NOD as to it. Secretary's Br. at 20. Since his later NOD mentions only the subsequent September 2015 rating decision that granted service-connection claims and assigned

the presently disputed effective date, the Secretary maintains the "June 2015 determination that insanity was not a factor[ ] was never appealed and is not on appeal here." *Id*.

There are several holes in this argument. First, the comment quoted by the Secretary does not appear in the administrative decision itself; it appears only in the cover letter. Second, the administrative decision does not purport to make any finding regarding insanity. Indeed, the June 2015 deferred rating decision issued only a few days earlier clearly declined to adjudicate "the question of insanity," finding the issue "moot" in light of the BCNR's actions. R. at 3460. Even so, it is perplexing how the Secretary can read the statement that "the issue of the claimant's insanity is NOT involved" as an adverse "determination" regarding the propriety of Mr. Monk's insanity arguments. Finally, why would a veteran be expected to appeal a wholly favorable administrative decision concluding that benefits are no longer barred by the status of his discharge, when that decision makes no determination regarding the issue of insanity, grants no specific claim, and doesn't assign any effective date?

An NOD "must indicate disagreement with a specific determination," but "the legal reasons supporting a challenge need not appear" in the document. *Jarvis v. West*, 12 Vet.App. 559, 562 (1999). Put more evocatively, "the 'statutory and regulatory regime that Congress created to protect veterans' allows a claimant to file a 'vague NOD' and at a later time 'cut the rough stone of his NOD to reveal the . . . radix of his issue that lay within.'" *Id.* (quoting *Collaro v. West*, 136 F.3d 1304, 1308-09 (Fed. Cir. 1999)). Mr. Monk filed an NOD as to the effective date assigned by the September 2015 rating decision. He was permitted to explain thereafter the arguments underlying his challenge. And he did, citing VA's failure to address his insanity argument and other issues in his brief to the Board. R. at 1982-95. Thus, the fact that Mr. Monk did not appeal the administrative decision did not extinguish his right to have VA address the insanity argument he explicitly raised.

As with the insanity issue, the Secretary contends that the Board was not required to consider the veteran's arguments that his original discharge status was not actually a bar to VA benefits. *See* 38 C.F.R. § 3.12(c)-(d) (discussing the conditions surrounding discharge that will bar benefits). This is so, the Secretary maintains, because VA made a formal status of discharge determination in the March 1971 administrative decision, which was not appealed and is, therefore, final. Because the only way Mr. Monk can attack that decision is by submitting a separate motion to reverse or revise it based on clear and unmistakable error (CUE)—which he hasn't done—the Secretary argues that his § 3.12 arguments weren't ripe.

This is a non sequitur. Mr. Monk isn't seeking to overturn the March 1971 administrative decision. Rather he is seeking to reopen the claims previously denied based on that status of discharge determination. A claim to reopen, of course, is the other statutory avenue for overcoming the finality of a decision. *Cook v. Principi*, 318 F.3d 1334, 1337 (Fed. Cir. 2002) (en banc). Although this Court at one time thought that a claim denied because of discharge status could not be reopened via the submission of new and material evidence, the Federal Circuit explicitly rejected that notion. *See D'Amico v. West*, 209 F.3d 1322, 1326-27 (Fed. Cir. 2000). A CUE motion would be necessary for Mr. Monk to obtain an effective date retroactive to his first claim for benefits, but he is not seeking that. In short, the veteran was free to raise his § 3.12 arguments within the context of a claim to reopen and was not obliged to do so in a CUE motion.

The Secretary also asserts that Mr. Monk's § 3.12 arguments are based on a misunderstanding of the regulatory basis on which his discharge status was found to be a bar to benefits. But that goes to the merits of the veteran's arguments, not to whether the Board was required to address them. And as the Board has yet to address them, the Court will not do so in the first instance. *See Kyhn v. Shinseki*, 26 Vet.App. 371, 375 (2013). (More about this below.)

Finally, the Secretary contends that, because the only remedy Mr. Monk seeks is reversal, and because his arguments—even if properly presented and meritorious—at best warrant remand, the Court should affirm. Appellants to this Court decide which issues to raise and which relief to request. Because an appellant's counsel is presumed "to be versed in the facts of the case and to know and to understand the law as it relates to those facts," the Court is entitled to treat the failure to ask for a particular remedy as a waiver of the right to that remedy. *Janssen v. Principi*, 15 Vet.App. 370, 374 (2001). The safest approach for appellants is often to seek alternative remedies, and attorneys must be mindful that courts may limit their analyses based on the relief requested.

The circumstances of this case, however, don't merit such a strict approach. The Court is authorized to "reverse a decision of the Board or to remand the matter, *as appropriate*." 38 U.S.C. § 7252(a) (emphasis added). This authority gives the Court discretion to remand when it thinks proper, even in cases where the only remedy clearly sought by the appellant is reversal. *See Adams v. Principi*, 256 F.3d 1318, 1321-22 (Fed. Cir. 2001). Here, Mr. Monk argued, first, that the Board erred in not considering his arguments and, second, that those arguments demonstrate entitlement to benefits. "[I]n the overall context of his briefing, the Court perceives the assertion that remand

is not being sought as an argument meant to bolster [his] position that reversal is the appropriate remedy and not . . . as an explicit waiver of a remand." *Coburn v. Nicholson*, 19 Vet.App. 427, 431 (2006). Where the Court concludes that it should not in the first instance resolve arguments for reversal, but an appellant has nevertheless demonstrated Board error warranting remand, affirmance is not "appropriate."

In sum, the Secretary's arguments against remand are unavailing.

C.

Having explained why remand is not foreclosed by Mr. Monk's briefing, all that remains is for the Court to determine whether it's the proper disposition of this appeal. Mr. Monk contends that the Court should reverse. He bases this on his status-of-discharge and insanity arguments, the specifics of which are now relevant.

He first argues that, under the circumstances of his discharge, neither statute nor regulation bars his receipt of VA benefits and, to the extent that VA found otherwise, it clearly erred. Specifically, he contends that the RO's June 2015 determination that he accepted an undesirable discharge to avoid trial by general court martial, *see* 38 C.F.R. § 3.12(d)(1), is plainly incorrect because the offenses with which he was charged were triable only by *special* court martial. *Compare* R. at 3407, *with* R. at 4186. He also argues more broadly that no other statutory or regulatory provision precludes his eligibility for VA benefits. All this being so, the veteran urges the Court to reverse the Board's denial of an earlier effective date.

Alternatively, he asserts that reversal is warranted based on the law's insanity exception. This provides that, "if it is established to the satisfaction of the Secretary that, at the time of the commission of an offense leading to a person's court-martial, discharge, or resignation, that person was insane, such person shall not be precluded from benefits under laws administered by the Secretary." 38 U.S.C. § 5303(b). And this is so "[n]otwithstanding" the earlier bars to benefits set out by Congress. *Id*.; *see also* 38 C.F.R. § 3.12(b) (stating that insanity also lifts regulatory bars). Mr. Monk urges the Court, based on the psychiatric evidence submitted with his claim to reopen, to find that he was insane at the time of the actions that led to his discharge. *See* 38 C.F.R. § 3.354(a) (2019) (defining "insanity" for VA purposes).[4]

[4] The validity of § 3.354(a) is currently being challenged by a purported class of veterans before a panel of this Court in the consolidated cases of *Bowling v. Wilkie*, U.S. Vet. App. No. 18-5263 (submitted to panel, July 3, 2019), and *Appling v. Wilkie*, U.S. Vet. App. No. 19-0602 (submitted to panel, July 30, 2019). Oral argument is currently scheduled for June 18, 2020.

Reversal is appropriate when this Court, "on the entire evidence, . . . is left with the definite and firm conviction that a mistake has been committed," but only after "the Board has performed the necessary fact-finding and explicitly weighed the evidence." *Deloach v. Shinseki*, 704 F.3d 1370, 1380 (Fed. Cir. 2013). Yet, as Mr. Monk readily acknowledges, the Board did not even discuss the provisions of § 3.12 or the insanity exception, much less make the requisite factual findings. For example, the circumstances leading to Mr. Monk's discharge from service must be resolved by the Board as factfinder. For, although the regional office in its 2015 decision seemed to think the veteran's discharge was a bar to benefits because he accepted it to escape trial by general court martial, the 1971 administrative decision VA first issued on this question appears to have determined that benefits were barred because the veteran was discharged under "other than honorable" conditions based on willful and persistent misconduct, R. at 4401, a separate regulatory prohibition. Likewise, the probative value of the medical evidence the veteran submitted regarding his mental state during service is a factual question for the Board to resolve in the first instance. *See Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 302-04 (2008). When the Board fails to address relevant law and to make factual determinations required under that legal analysis, the proper course is to vacate its decision and remand for it to do so. *See, e.g.*, *Moody v. Wilkie*, 30 Vet.App. 329, 342 (2018). That disposition, rather than reversal, is appropriate here.

One final note. Mr. Monk challenges the validity of § 3.12. To the extent it permits VA to treat an "other than honorable" discharge in certain circumstances to bar benefits, he contends that it's inconsistent with 38 U.S.C. § 101(2), which only denies veteran status to someone who is discharged under "other than dishonorable" conditions. (He acknowledges that this argument was not raised below, but he asserts that it would have been futile to do so since the Board cannot invalidate or ignore a regulation. *Cf.* 38 U.S.C. § 7104(c) ("The Board shall be bound in its decisions by the regulations of the Department . . . .").)

In making this argument, Mr. Monk tries to sidestep *Camarena v. Brown*, 6 Vet.App. 565 (1994). There, the Court roundly rejected the notion that § 3.12(d) was inconsistent with section 101(2). "Congress clearly intended that the phrase 'conditions other than dishonorable' was to include persons other than those receiving dishonorable discharges." *Id*. at 568. The Secretary was given discretion to determine when "the *overall conditions* of service had, in fact, been dishonorable," and he did not exceed that authority or contradict section 101(2) when he specified

those conditions in § 3.12(d). *Id*. at 567. Our decision was summarily affirmed by the Federal Circuit. *Camarena v. Brown*, 60 F.3d 843 (Fed. Cir. 1995).

Perhaps realizing that *Camarena* settled the validity of subsection (d), Mr. Monk focuses on subsection (a). It states:

> If the former service member did not die in service, pension, compensation, or dependency and indemnity compensation is not payable unless the period of service on which the claim is based was terminated by discharge or release under conditions other than dishonorable. A discharge under honorable conditions is binding on [VA] as to character of discharge.

38 C.F.R. § 3.12(a). The veteran reads this provision as establishing a "blanket presumption of ineligibility" for VA benefits sought by veterans who received a discharge under "other than honorable" conditions. Appellant's Br. at 21. It does nothing of the kind. The first sentence echoes section 101(2)'s prohibition on benefits when discharge was "dishonorable." The second sentence simply states that a discharge characterized as "under honorable conditions" cannot be gainsaid by VA. *See Robertson v. Gibson*, 759 F.3d 1351, 1356 (Fed. Cir. 2014). There is no mention of "other than honorable" discharges in subsection (a). To the extent such discharges can bar VA benefits, the circumstances when they do are defined in subsection (d). Because the veteran fails to acknowledge *Camarena*'s logic, and the Court discerns no principled basis for distinguishing it, Mr. Monk's challenge to § 3.12 is without merit.

III. CONCLUSION

The Court VACATES the December 20, 2018, Board decision and REMANDS those matters for further proceedings consistent with this opinion.

DATED: May 13, 2020

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