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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-3992

JOHN J. MULL, 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 John J. Mull appeals a May 13, 2019, Board of Veterans' Appeals decision that denied service connection for hearing loss and tinnitus. 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).

The parties agree that the Board failed to consider a medical opinion that Mr. Mull submitted on May 9, 2019, and that links his tinnitus and hearing loss to service. We are asked to decide the proper remedy.

The Secretary argues that we should remand both claims to the Board so that the Board may properly weigh the evidence in the first instance, and Mr. Mull would like us to award service connection based on the positive medical opinion. We find that remand is warranted for the Board to provide an adequate statement of reasons or bases and make relevant findings of fact in the first instance. *See Tucker v. West*, 11 Vet.App. 369, 374 (1998) (remand is appropriate "where the Board has. . . failed to provide an adequate statement of reasons or bases").

This is because "appellate tribunals are not appropriate fora for initial fact finding." *Hensley v. West*, 212 F.3d 1255, 1263 (Fed. Cir. 2000). Instead, as finder of fact, it is the Board that has the duty to weigh the evidence in the first instance. *Buchanan v. Nicholson*, 451 F.3d 1331, 1336

(Fed. Cir. 2006). And it must discuss all issues raised by the claimant or the evidence. *Robinson v. Peake*, 21 Vet.App. 545, 552 (2008), *aff'd sub nom. Robinson v. Shinseki*, 557 F.3d 1335 (Fed. Cir. 2009). Here, the Board failed to do so. Thus, remand is the appropriate remedy because the Board has provided an inadequate statement of reasons or bases and failed to address the favorable evidence in the first instance. *See Tucker*, 11 Vet.App. at 374.

For these reasons, the Board's May 13, 2019, decision is SET ASIDE and the matter is REMANDED for further proceedings.

DATED: May 14, 2020

Copies to:

John J. Mull

VA General Counsel (027)