

*Not published*

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

No. 19-0127

STEPHEN M. BROWN,

APPELLANT,

v.

ROBERT L. WILKIE,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before MOORMAN, *Senior Judge*.<sup>1</sup>

**ORDER**

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

On April 27, 2020, the Court issued a decision vacating in part a November 5, 2018, decision of the Board of Veterans' Appeals (Board) that denied the appellant's claim for a disability rating in excess of 0% effective before May 15, 2015, for his service-connected headaches. The Court affirmed the Board's decision to the extent it denied earlier effective dates for the appellant's awards of special monthly compensation (SMC) and a total disability rating based on individual unemployability (TDIU). On May 8, 2020, the appellant filed a motion for reconsideration asking the Court to "grant his request for a starting date of October 1, 1993[,] for his 50% disability rating of service-connected headaches." Appellant's Motion for Reconsideration at 3.

In its April 27, 2020, memorandum decision, the Court found that the Board failed to provide an adequate statement of its reasons or bases for its decision denying an earlier effective date for the appellant's 50% disability rating and, therefore, the Court vacated that portion of the Board's decision and remanded the matter for readjudication. In his motion for reconsideration, the appellant reiterates his arguments made in his initial brief in support of reversal. Appellant's Motion for Reconsideration at 1-3. The appellant asserts that he "fears that in readjudicating the matter of his service-connected disability for headaches in excess of 0% for headaches prior to May 13, 2015, he is unlikely to receive a fair and just consideration by the [Board]."

Reversal is the appropriate remedy only in cases in which the only permissible view of the evidence is contrary to the Board's decision. *Gutierrez v. Principi*, 19 Vet.App. 1, 10 (2004); *Johnson v. Brown*, 9 Vet.App. 7, 10 (1996). Where the Board has incorrectly applied the law, failed to provide an adequate statement of reasons or bases for its determinations, or where the

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<sup>1</sup> Judge Moorman is a Senior Judge acting in recall status. *In re: Recall of Retired Judge*, U.S. VET. APP. MISC. ORDER 02-20 (Jan. 2, 2020).

record is otherwise inadequate, remand is generally the appropriate remedy. *See Gutierrez*, 19 Vet.App. at 10; *Tucker v. West*, 11 Vet.App. 369, 374 (1998). Rule 35(e) of this Court's Rules of Practice and Procedure requires that a motion for reconsideration state "the points of law or fact that the party believes the Court has overlooked or misunderstood." U.S. VET. APP. R. 35(e).

The appellant has not demonstrated, or even argued, that the Court has overlooked or misunderstood any facts or law applicable to his claims. Accordingly, the appellant has not shown that reconsideration of its decision is warranted in this case. In pursuing the matter on remand, the appellant is free to submit additional evidence and argument on the remanded matter, and the Board is required to consider any such relevant evidence and argument. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002) (stating that, on remand, the Board must consider additional evidence and argument in assessing entitlement to benefit sought); *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order). "A remand is meant to entail a critical examination of the justification for the decision. The Court expects that the [Board] will reexamine the evidence of record, seek any other evidence the Board feels is necessary, and issue a timely, well-supported decision in this case." *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991).

Upon consideration of the foregoing, it is

ORDERED that the appellant's motion for reconsideration is denied.

DATED: May 14, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read 'William A. Moorman', written in a cursive style.

WILLIAM A. MOORMAN  
Senior Judge

Copies to:

Michael J. Malone, Esq.

VA General Counsel (027)