IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

CLIFTON ARLINE,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 18-0765
	)	
ROBERT L. WILKIE,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

NOTICE OF CLARIFICATION AND CONCESSION OF ERROR

In its July 12, 2019, memorandum decision, the Court affirmed the Board's denial of entitlement to a total disability rating based on individual unemployability (TDIU). *Arline v. Wilkie*, No. 18-0765, slip op. at 2-7 (Jul. 19, 2020). The Court also found the Board provided an inadequate statement of reasons or bases for denying a rating higher than 50% for Appellant's service-connected schizophrenia, for the period before December 7, 2011, because it "failed to discuss whether [Appellant's] explanation as to why his report of hallucinations was inconsistent," and that such error was prejudicial, warranting remand. *Id*. at 8.

Following Appellant's motion for panel review on the meaning of the term "protected environment" in 38 C.F.R. § 4.16(a), the Court withdrew its memorandum decision and scheduled an oral argument for this case to take place on June 19, 2020, at 1:00 p.m.

To focus the issues to be addressed at oral argument, the Secretary hereby notifies the Court that he concedes error with the Board's denial of a rating higher than 50% for Appellant's service-connected schizophrenia for the period before December 7, 2011, consistent with the Court's since-withdrawn memorandum decision. Notably, on that issue, the Court did not address the remaining arguments Appellant presented in his brief. *See id*. at 7-8 (citing *Best v. Principi*, 15 Vet.App. 18, 20 (2011)). The Secretary's position as to those arguments remains unchanged from the position he took in his November 8, 2018, brief.

The Secretary's position as to the Board's denial of entitlement to TDIU also remains unchanged. As he argued in his November 8, 2018, brief, and in his March 3, 2020, supplemental brief, the Secretary continues to urge the Court to again affirm that part of the Board's decision. The Secretary intends to use his oral argument time to address the Board's denial of entitlement to TDIU and the arguments the parties have raised relating to that issue following Appellant's motion for panel review on that issue.

Respectfully submitted,

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