

19-5567

UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

NO. 19-5677

Willie M. Richardson Jr,

Appellant

v.

Robert L. Wilkie
Secretary of Veterans Affairs

Appellee

**MOTION FOR RECONSIDERATION OF
JUDGMENT DATED JUNE 10, 2020 MAILED JULY 22, 2020**

Please accept Appellant's Motion for Reconsideration of Judgment dated June 10, 2020 that was most recently mailed out to Appellant on July 22, 2020. Appellant is submitting this Motion for Reconsideration a timely manner. The Appellant is requesting a Motion For Reconsideration in that the Veteran's original claims that were file for his eye, back, and knees had nothing to do with contaminating water at Camp Lejune. They were combine with is other claims that he had going on at the time. Veteran also proved in his service treatment records that were presented dating November 5, 1980 Base 3/2 Camp Lejune NC 28542 documented that the appellant complained of back pains that had been going on for a month. The service treatment records also stated that the veteran complained of back hurting when he carried radio on his back after his workday has ended after exercising he was diagnosed with muscle strains.

Let the record show that service treatment records also showed that the veteran also complained of eye problems while in service including photophobia and dry eyes. The appellant was seen at Bas 3/2/2 CLNC 28542 21410 complaining of injury and redness and getting redder. Service treatment records were positive for right eye problems on 9/16/80 when exposed to sunlight, strong doubt viral. On September 29,

1980 the appellant had another visit at Dr. Richards at Camp Lejune. April 16, 2014 a cornea examination that was blacked out points out several small TB scars in visual axis, OD clear. These exams came about after the appellant was hit in the eye with a round.

The Appellant respectfully requests that the court grants Motion for Reconsideration.

August 2, 2020

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Willie M. Richardson Jr.", written over a horizontal line.

Willie M. Richardson Jr.

419 Vining Street

Sumter, SC 29150

Appellant

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APPELLANT'S BRIEF

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

No. 19-5567

WILLIE M. RICHARDSON JR

Appellant

v.

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

Appellee

Willie M. Richardson Jr.
419 Vining Street
Sumter, SC 29150
803-938-5137
Appellant

TABLE OF AUTHORITIES

CASES

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STATUTES

31 C.J.S. Evidence §168 (2007);	5
2 Kenneth S. Brown, McCormick on Evidence § 264 (6 th ed. 2006)	5
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REGULATIONS

CITATIONS TO RECORD BEFORE THE AGENCY

STR Sept. 1980 BAS 3/2/2 CLNC 28542 21410	3
STR Sept. 29, 1980	3
STR Sept. 16, 1980	3
STR Nov. 5, 1980 Base 3/2 Camp Lejune NC 28542	3

HISTORY

The veteran had active service from October 25, 1977 to October 23, 1981. The veteran's record confirms his service and exposure to contaminated water at Camp Lejeune. Several claims appeared before the Board of Veteran's Appeals (Board) on appeal from several rating decisions issued by two Regional Offices. The veteran and his spouse testified before Veterans Law Judge John J. Crowley in a November 2015 videoconference, in accordance with a request for hearing included in the Veteran's September 2013 substance appeal of the claim for service connection for lichen planus and all service connection based on exposure to contaminated water at Camp Lejeune. The transcript of that videoconference hearing is associated with the veterans electronic claims file.

An October 2008 rating decision by the Columbia, South Carolina Regional Office, (RO) of the Department of Veterans Affairs (VA) denied Service Connection for a back disability, an eye disability, and a toe nail disability and granted service connection for tinea pedis. The veteran disagreed with and perfected appeal of the denial of service connection for onychomycosis (toenail disability) in 2009. The RO interpreted an August 2010 statement as a withdrawal of the claim for service connection for onychomycosis. Because the veteran stated disagreement with the evaluation assigned for tinea pedis.

The veteran in his disagreement with the rating for tinea pedis stated he was entitled to a higher rating for bilateral tinea pedis and onychomycosis involving all 10 toenails. The board did not find that to be a withdrawal of the already perfected appeal.

The February 2013 request for VA Examinations and a February 2013 VA Examination report addressed the claim for service connection for onychomycosis. However, the claim was not thereafter adjudicated the issue was properly before the board on appeal.

In October 2010 Columbia, South Carolina RO denied service connection for lichen planus. By a claim electronically submitted in early September 2011, the veteran contended that he should be granted service connection for lichen planus disabling based on exposure to contaminated water at Camp Lejeune. Jurisdiction of the Veteran's Claims file was transferred to the Louisville, Kentucky RO.

In September 2011, veteran also submitted electronic claims for service connection for gout of feet and knees.

Two claims were submitted in Sept. 2011 but only one claim discussed veteran's exposure to contaminated water at Camp Lejeune.

At his November 15 video conference, the veteran testified his belief that he appealed his denial of entitlement to service connection for gout by continuing to seek service connection for knees disability. Rating decisions in July 2010 and June 2013 granted service connection for pes planus with plantar fasciitis and allergic rhinitis. The veteran initially sought service connection for sinus disability and he perfected an appeal for that disability.

The following issues are addressed in the remand appended to this decision: (1) entitlement to service connection for gout, to include gout of the knees and or feet. (2) Entitlement to Service Connection for an eye disability. (3). Entitlement to service connection for a back disability. (4) Entitlement to service connection for left knee disability other than gout to include tendinitis, arthrosis, or meniscal tear.

Veteran received decision from Board of Veterans appeals dated May 28, 2019 stating that:

Service connection for bilateral knee disability other than gout to include as secondary connected disabilities and exposure to contaminated water at Camp Lejeune is denied.

Service Connected for back disability to include as secondary to a service connected disabilities and exposure to contaminated water at Camp Lejeune is denied.

Service connection for an eye disability to include as secondary to service connected disabilities and exposure to contaminated water at Camp Lejeune is denied.

Service connection for gout to include as secondary to service connected disabilities and exposure to contaminated water at Camp Lejeune is denied.

ISSUES

1). WAS ALL OF VETERANS SERVICE TREATMENT RECORDS USED BY BOTH REGIONAL OFFICES IN THE DECISION MAKING PROCESS.

2). DID THE REGIONAL OFFICE ERRORED BY OVERLOOKING VETERAN'S SERVICE TREATMENT RECORDS.

DISCUSSION

1). WAS ALL OF VETERANS SERVICE TREATMENT RECORDS USED BY BOTH REGIONAL OFFICES IN THE DECISION MAKING PROCESS.

Mr. Richardson disagrees with the decision service connection for eye disability to include service connected disabilities and exposure to contaminated water at Camp Lejeune is denied. It is stated by the Regional Office in the decision letter that the Veterans STR's do show he complained of eye problems while in service, including photophobia and dry eyes.

Let the record show that you noted in the Fact Findings that veteran does not have an eye disability other than gout that was incurred in and due to his time in service, to include as proximately due to his service connected disabilities or his exposure to contaminated water at Camp Lejeune. The RO have pointed out that the veteran does have gout that was incurred in and due to his time in service and that has been perfected.

You also mentioned that the examiner stated that the veterans dry eyes and scars on his right cornea were not related to the service and the scars were likely related to a small foreign body or previous infections.

Let the record show that the veteran's scars and foreign bodies are coming from injury where he was hit in the right eye by a round while giving instructions on the rifle range. It was also noted that the veteran had an examination for his eyes in June 2010. However, the examiner did not review the veteran's file because the veteran's file was not available for review. However, he was able to render an opinion. Let the record show that the examiner rendered an opinion without viewing the veteran's file. Let the record also show the attached STR that was submitted during video conference dated September 16, 1980 the veteran was seen at Bas 3/2/2 CLNC 28542 21410 complained of injury and redness and getting redder. STR is also positive for right eye problems on 9/16/1980 when exposed to sunlight, Strong doubt viral. This location was also at Camp Lejune. On September 29, 1980, veteran had another visit to Dr. Richards at Camp Lejune.

Mr. Richardson had an examination done that was printed on April 16, 2014. However, cornea exam blacked out and the portion blacked out points out several small TB scars in visual axis, OD, clear, OS.

Mr. Richardson also disagrees with this decision because the initial claim for eye had nothing to do with the exposure to water at Camp Lejune. This claim was bundled together with all of his other claims.

Mr. Richardson also disagrees with decision, service connection for back disability to include as secondary to service connected disabilities and exposure to water at Camp Lejune is denied.

Please be advised that the RO overlooked veterans STR dated November 5, 1980. Base 3/2 Camp Lejune NC 28542 the Veteran complained of back pains that had been going on for a month. The STR states that the veteran complained of his back hurting when he carried radio on his back and after his working day has ended after exercising, he was diagnosed with muscle strain.

Please be advised that the originality of the claim on the back and knees had nothing to do with contaminated water at Camp Lejune. This was bundled together also.

2). DID THE REGIONAL OFFICE ERRORED BY OVERLOOKING VETERAN'S SERVICE TREATMENT RECORDS.

Let the record show that the veteran submitted necessary documentation to find him service connected for back and eye. **Johnson v. Barnhart 434 F3d 650 654 (4th Cir. 2005)** Courts typically accord greater weight to the testimony of a treating physician because the treating physician has necessarily examined the applicant and has a treatment relationship with the applicant.

You noted in your Reasons and Findings in page 3 last paragraph the veterans STR do show he complained of eye problems while in service. In order to know this you had to view them. You also stated that STR's were negative for complaint or treatment of a chronic back problem while in service.

The veteran's STR does show where veteran was treated for his back as well as his eyes. However, statement of the case points out that STR were not viewed because they were unavailable so today the veteran was diagnosed with problems with his eyes and scars are there from when the round hit him in the eye and this falls under the presumption condition and it does apply. As well as his back condition has records do show him being treated for back conditions. Because back conditions can flare up on any given occasion and last for weeks, months, and go away and then come back this to explain why the Department of Veteran Affairs is dancing around taking responsibility.

Stegall v. West, 11 Vet. App. 268 (1998), the board remanded a VA and psychiatric examinations were scheduled at Dallas VA medical Center. The RO confirmed and continued the 10 % Rating but found the Veteran was entitled to 100 % scheduler rating for PTSD. The Board remanded because the veterans medical examination was inadequate.

The board's reliance on inadequate medical examination cause for remand.

The statement of the case states that the veteran is not competent to opine on complete medical questions such as a casual connection between his current disabilities and his time in service, his other service connected disabilities, or his exposure to contaminated water.

Jandreau, No. 04-1254 Slip Op. at 3 Lay evidence can be competent and sufficient to establish a diagnosis of a condition when (1) a lay person is competent to identify the medical condition. (2) the lay person is reporting a contemporaneous medical diagnosis or (3) lay testimony describing symptoms at the time supports a later diagnosis by a medical professional contrary to the Veteran's court the relevance of a lay evidence is not limited to the third situation but extends to the first two as well. Whether lay evidence is competent and sufficient in a particular case, is a fact issue to be addressed by the board rather than a legal issue to be addressed by the Veteran's court. We do not reach the question whether in the present case the lay evidence is competent and sufficient to establish shoulder dislocation, a matter beyond our jurisdiction we remand to veterans court that it may remand to board for further consideration under the correct legal standard. Here we see that particular case was reverse and remanded.

You also stated that the board places more probative value on the medical evidence of record and has weighed it accordingly as discussed above. Let the record show that the RO has erred in that more probative value was not placed on medical evidence of record if it did not look at all of veteran's STR had the RO looked at STR it would have noted all veterans treatment dates and treatments.

In the statement of the case, you cited **Jandreau v. Nicholson, 492 F.3d 1372, 1377, 1377 n.4 (Fed. Cir.2007)**. However, here in this case, the veteran was denied service connection

because no medical evidence was received showing continually of treatment for right shoulder since discharge for military also Jandreau argued regarding destruction of records while in governments custody.

Let the record show that this case would not apply in Mr. Richardson's case. His STR were present and in governmental custody. Mr. Richardson also sent in copies as well as he is sent duplicate copies with this initial appeal.

31 C.J.S. Evidence §168 (2007); 2 Kenneth S. Brown, McCormick on Evidence § 264 (6th ed. 2006) the burden is on the party seeking to use the evidence to show each criterion.

Let the record show that Mr. Richardson has perfected this case.

38 U.S.C. § 5107 (2) The Secretary shall consider all lay and medical evidence of record with respect to benefits.

CONCLUSION

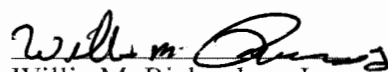
Mr. Richardson has perfected this case in that he presented the necessary documentation for him to be granted service connection for his back, eye, and gout in knees; As well as have an admittance from the RO in the Fact Findings in the statement veteran does not have an eye disability other than gout that was incurred in and due to his time in service, to include as proximately due to his service connected disabilities or his exposure to contaminated water at Camp Lejune. Let the record show that the RO have pointed out that the veteran does have gout that was incurred in and due to his time in service and that perfected his gout. The burden of proof is on the Department of Veterans Affairs to prove ye there otherwise.

This evidence taken in conjunction with the new evidence presented here with and discussed more fully in above compels that the RO findings as stated in its decisions are erroneous and must be reversed. Therefore, we are thanking the United States Courts of Appeals for ruling in favor of Mr. Willie M. Richardson Jr. and Reversing the Board of Veterans' Appeals decision and granting him a Service Connection Rating decision for his Back, Eyes, and Gout.

I certify that the statements on this (document, form, letter) are true and correct to the best of my knowledge and belief.

08/02/2020

Respectfully Submitted,



Willie M. Richardson Jr.

419 Vining Street
Sumter, SC 29150
Appellant

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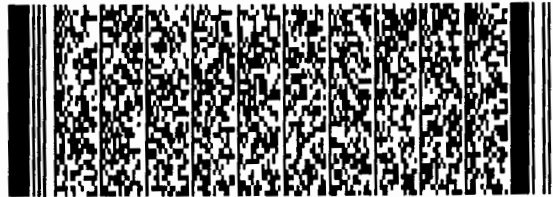
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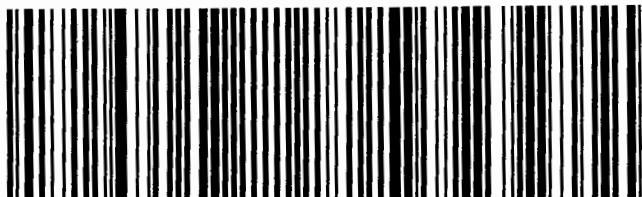
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