

**ERMA ROLLINS,** )  
Appellant, )  
 )  
v. ) Vet. App. No. 20-4179  
 )  
**DENIS MCDONOUGH,** )  
Secretary of Veterans Affairs, )  
Appellee. )

Pursuant to U.S. Vet. App. R. 27(a) and 45(g), the parties respectfully move this Court to issue an order (1) vacating the February 20, 2020, decision of the Board of Veterans' Appeals (Board or BVA) that denied service connection for plantar fasciitis of the left and right foot, pes planus of the left and right foot, and a left and right leg condition, and (2) remanding these matters for readjudication.

Remand is warranted because the Board provided inadequate reasons or bases. *See Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990). In the decision below, the Board relied on a February 2018 VA examination report to conclude that service connection was not warranted for Appellant’s plantar fasciitis and pes planus. (R. at 8-11). The examiner’s rationale for why there was no nexus between Appellant’s plantar fasciitis and Appellant’s service was that “No in-service diagnosis of bilateral plantar fasciitis was found.” (R. at 162 (Feb. 28, 2018, VA examination report)). The examiner’s rationale for why there was no nexus between Appellant’s pes planus and Appellant’s service was that

The Veteran's bilateral pes planus which clearly and unmistakably existed prior to service was not permanently aggravated beyond its natural progression during service. No objective medical record evidence to indicate otherwise was found. DoD Enlistment Report of Medical Examination 09/20/1962 documents 'pes planus (third degree)' while DoD Separation Report of Medical Examination 09/15/1966 documents 'Has flat feet, asymptomatic at present.' This does not constitute permanent aggravation.

(R. at 162). Yet the examiner did not address the June 1964 in-service report of foot pain (R. at 1152 (June 8, 1964 service treatment record)) and post-service assertions that his foot pain began in service. (R. at 689 (Jan. 23, 2018 private DBQ)); (R. at 1059 (Oct. 15, 2014 statement in support of claim)); see *Steffl v. Nicholson*, 21 Vet.App. 120, 123 (2007) ("An opinion is adequate where it is based upon consideration of the veteran's prior medical history and examinations and also describes the disability, if any, in sufficient detail" to allow for a fully-informed decision). Therefore, remand is warranted for the Board to address the adequacy of the February 2018 VA examination report and to determine whether any further development is warranted.

As Appellant's claim regarding a left and right leg condition is secondary to pes planus (R. at 11-12), the claims regarding a left and right leg condition are being remanded as inextricably intertwined. *Harris v. Derwinski*, 1 Vet.App. 180, 183 (1991).

### **CONCLUSION**

Considering the foregoing, the parties respectfully move the Court to enter an order vacating the February 20, 2020, Board decision and remanding the

appeal for further proceedings consistent with this motion. The parties agree that this joint motion and its language are the product of the parties' negotiations. The Secretary further notes that any statements made herein shall not be construed as statements of policy or the interpretation of any statute, regulation, or policy by the Secretary. Appellant also notes that any statements made herein shall not be construed as a waiver as to any rights or VA duties under the law as to the matter being remanded except the parties' right to appeal the Court's order implementing this joint motion. The parties agree to unequivocally waive any right to appeal the Court's order on this joint motion and respectfully ask that the Court enter mandate upon the granting of this motion.

On remand, Appellant may submit additional argument to the Board consistent with a notice letter that will be sent by the Board. In any subsequent decision, the Board must set forth adequate reasons or bases for its findings and conclusions on all material issues of fact and law presented on the record. See 38 U.S.C. § 7104(d)(1); *Gilbert*, 1 Vet.App. at 57 (1990). The Board shall incorporate copies of this joint motion and the Court's order into Appellant's record. The Board shall provide this claim expeditious treatment as required by 38 U.S.C. § 7112.

Respectfully submitted,

**FOR APPELLANT:**

Date:

/s/ Scott A. Martin

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