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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-9045

TIMOTHY W. HARRIS, APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before PIESTCH, GREENBERG, and DAVIS,¹ *Judges*.

ORDER

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

On December 30, 2019, Timothy W. Harris filed through counsel a Notice of Appeal from a September 4, 2019, Board of Veterans' Appeals (Board) decision finding untimely the submission of his Substantive Appeal received on July 26, 2017, with respect to the rating decisions dated August 6, 2014, January 29, 2015, and May 20, 2016. Those three rating decisions denied entitlement to an increased disability rating greater than 10% for tinea pedis and callouses of both feet, and service connection for an acquired psychiatric disorder, headaches, a sleep condition, a back disability, a left knee disability, a right knee disability, a stomach condition, and a testicular condition. The Board thus, as a matter of law, denied the appeal of these claims due to the finding of untimeliness of the Substantive Appeal.² The appellant also appealed the Board's denial of the requests to reopen his previously denied claims for service connection for a back disability, a stomach disability, a left knee disability, a right knee disability, a testicular disability, and a sleep disability.³

At the parties' request, on April 1, 2021, the Court stayed proceedings to facilitate alternative resolution of this matter. On April 2, 2021, the parties filed a joint motion to terminate

¹ Judge Davis is a Senior Judge acting in recall status. *In re Recall of Retired Judge*, U.S. VET. APP. MISC. ORDER 03-21 (Jan. 4, 2021).

² Record (R.) at 5.

³ *Id.* at 5-6. The Board also granted the requests to reopen the previously denied claims for service connection for an acquired psychiatric disorder and for a headache disability. R. at 5. The Board's decision on these matters is favorable to the appellant and is not subject to review here. *See Roberson v. Principi*, 17 Vet.App. 135, 139 (2003) ("[T]he Court is clearly without authority to reverse findings of fact that are beneficial to claimants."). Finally, the Board remanded the appellant's claim for an increased disability rating in excess of 10% for tinea pedis and callouses of both feet, and remanded his reopened claims for service connection for an acquired psychiatric disorder and a headache disability. R. at 6. Those matters are therefore not before the Court. *Breeden v. Principi*, 17 Vet.App. 475, 477 (2004).

this appeal pursuant to the terms set forth in a stipulated settlement agreement.⁴ The agreement, which the parties attached to the motion, provides the following: (1) the Secretary agrees that the appellant's July 26, 2017, VA Form 9, Substantive Appeal to the Board, was timely filed in response to three Statements of the Case (SOCs) issued on October 7, 2016, and that those SOC's relate to rating decisions issued on August 6, 2014, January 29, 2015, and May 20, 2016, respectively; (2) based on the timely filed VA Form 9, the Secretary agrees to certify to the Board the appellant's claims for entitlement to: a rating in excess of 10% for tinea pedis and callouses of both feet, and service connection claims for a sleep condition, a back disability, a left knee disability, a right knee disability, a stomach condition, and a testicular condition; (3) based on the timely filed VA Form 9, the parties agree that the appeal of the August 6, 2014, rating decision denying entitlement to an increased rating in excess of 10% for tinea pedis and callouses of both feet is still pending and that the additional claim stream that now exists stemming from a June 21, 2017, statement and captioned as a claim for an increased rating for the same condition is subsumed by the timely appeal arising from the August 2014 rating decision; (4) the appellant agrees to withdraw his appeal of the 2017 claim for an increased rating in excess of 10% for tinea pedis and callouses of both feet, which was most recently denied in the August 27, 2020, Supplemental SOC and returned to the Board on March 4, 2021; (5) because VA has awarded service connection for an acquired psychiatric condition and for a headache disability, the parties agree that certification of those issues to the Board is no longer required; (6) because the parties agree that the appeals of the claims for service connection for an acquired psychiatric condition and for a headache disability were timely, and that the timeliness of those appeals may impact the effective date assigned for each award, the Secretary agrees to reconsider the effective dates assigned to both awards, using October 21, 2014, as the date of claim, and agrees to issue a new decision regarding this matter; (7) the Secretary agrees to promptly notify the Veterans Benefits Administration (VBA) upon final disposition by the Court with respect to this settlement and that the VBA shall take prompt action to implement this agreement; (8) the Secretary does not admit that any error was committed by VA or any of its employees in the adjudication of the claims that are the subject of this agreement; (9) the appellant agrees that his pending appeal in the U.S. Court of Appeals for Veterans Claims, U.S. Vet. App. No. 19-9045, shall be terminated, with prejudice, as to all issues addressed in the September 4, 2019, Board decision following execution of the parties' agreement; and (10) the parties agree that their agreement is entered into for the sole purpose of avoiding further litigation and the costs related thereto, and that the settlement is based on the unique facts of this case and in no way should be interpreted as binding precedent for the disposition of future cases.

When the Secretary enters into a settlement or stipulated agreement with an appellant, the Board decision giving rise to the appeal is overridden to the extent that the decision was adverse to the claimant. Such an agreement moots the case or controversy in an appeal and deprives the Court of jurisdiction.⁵ Because the parties in this appeal have entered into a settlement agreement in which the appellant agrees that his pending appeal shall be terminated with prejudice as to the issues addressed in the September 4, 2019, Board decision, the controversy is mooted and the Court lacks jurisdiction.⁶

⁴ See U.S. VET. APP. R. 42.

⁵ *Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) (per curiam).

⁶ See *id.*

Accordingly, the Court will withdraw the order scheduling oral argument on May 4, 2021, and grant the parties' joint motion to terminate this appeal. The parties' agreement also negates the need for supplemental briefing, and the Court will therefore withdraw the March 17, 2021, order.

Upon consideration of the foregoing, it is

ORDERED that the stay of proceedings in this appeal is lifted. It is further

ORDERED that the Court's March 15, 2021, order scheduling oral argument in this matter is withdrawn. It is further

ORDERED that the Court's March 17, 2021, order for supplemental briefing is withdrawn. It is further

ORDERED that the April 2, 2021, joint motion to terminate this appeal is GRANTED. It is further

ORDERED that the appeal is TERMINATED. It is further

ORDERED that this order is the final judgment and mandate of the Court.⁷

DATED: April 22, 2021

PER CURIAM.

Copies to:

Daniel G. Krasnegor, Esq.

VA General Counsel (027)

⁷ See U.S. VET. APP. R. 41(c)(2).