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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-4105

ALLAN K. POTTER, APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before BARTLEY, *Chief Judge*, and ALLEN and FALVEY, *Judges*.

ORDER

Appellant Allan K. Potter appeals an April 19, 2019, Board of Veterans' Appeals decision that denied entitlement to a total disability rating based on individual unemployability on an extraschedular basis. On September 3, 2021, this matter was submitted to a panel of the Court and oral argument was scheduled for December 2, 2021. On November 16, 2021, the parties filed a joint motion for remand (JMR).

In the JMR, the parties agree that remand is required because the Board failed to provide an adequate statement of the reasons or bases for its decision. Specifically, the Board (1) failed to adequately address appellant's use of oxycodone and diazepam on his ability to work, including a June 2013 progress note and the 2017 VA examiner's note that appellant no longer took those medications; (2) failed to explain why work in an office, call center, or similar setting, is consistent with appellant's work history and level of education; (3) erred when finding that Mr. Potter's disability would only require him to "stand and stretch" when in fact it would require him to "lay down on the floor with his feet up for 15 minutes"; and (4) failed to consider the different standards used by the Social Security Administration (SSA) and VA when it determined that it was not bound by the SSA finding that Mr. Potter is disabled.¹

The Court will grant the parties' motion in full. Based on the parties' explicit waiver of their rights to appeal, and consistent with Rule 41(c)(2) and (3) of the Court's Rules of Practice and Procedure, this order will serve as the mandate of the Court.²

Upon consideration of the foregoing, it is

ORDERED that that the parties' joint motion for remand is GRANTED. It is further

¹ Joint Motion for Remand (JMR) at 1-2.

² See *Bly v. Shulkin*, 883 F.3d 1374, 1377 (Fed. Cir. 2018).

ORDERED that this order is the mandate of the Court.

DATED: November 29, 2021

PER CURIAM.

Copies to:

Jonathan C. Heiden, Esq.

VA General Counsel (027)