

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

GILBERT R. DURAN,)	
Appellant,)	
)	
vs.)	Vet. App. No. 20-5759
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
Appellee.)	

**APPELLANT’S MOTION FOR CLARIFICATION OF ISSUES
FOR ORAL ARGUMENT**

Mr. Gilbert R. Duran (Appellant) appealed a Board Decision dated April 23, 2020, that, in relevant part, denied his claim for a rating in excess of 30 percent for post-traumatic stress disorder and “discontinued” a rating of 30 percent for Parkinson’s disease under Diagnostic Code 8004. The parties agree that the denial of post-traumatic stress disorder should be remanded. See Appellee Brief at 14. However, the parties could not find agreement on the issue of discontinuing the 30 percent rating for Parkinson’s.

On July 6, 2022, this case was submitted to a panel, and oral arguments were scheduled shortly after. Appellant wishes to clarify the issue before the panel for oral argument. Counsel for Appellant has reached out to the Secretary for a position on this Motion, but a position has not been determined.

The parties have raised various arguments. Appellant raised the argument that the Board remandably erred in its interpretation of 38 C.F.R. § 4.124a, finding that the minimum 30 percent rating to be temporary and

replaceable by combined residuals in excess of the minimum. See Appellant's Brief at 5-8. Appellant argues that the Board's interpretation of 4.124a is not consistent with the language in the regulation. *Id.*

The Secretary's response not only opposed the position raised by Appellant—that the plain meaning of the regulation is inconsistent with the Board's interpretation—but also raised the issue of the Court's deference to the Secretary's interpretation of the regulation. See Appellee's Brief at 7-14. As part of that argument, the Secretary argued that the M21-1 represents the VA's "considered view on this matter..." *Id.* at 10.

Appellant respectfully seeks clarification of the issue of interest to the Court to aid the parties in preparing for oral argument. Clarification of the issues would also assist the Court by ensuring that the parties are prepared to address the issue or issues the Court believes pertinent to the claims on appeal and raised by the arguments presented by the parties.

WHEREFORE, the parties respectfully move the Court for clarification of the issue, or issues, to be addressed at oral argument.

Respectfully submitted,

GILBERT R. DURAN, Appellant

/s/ Stephani M. Bennett
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