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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 21-3663

RUBEN VILLANUEVA, APPELLANT,

V.

DENIS MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before FALVEY, *Judge*.

MEMORANDUM DECISION

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

FALVEY, *Judge*: Marine Corps veteran Ruben Villanueva, through counsel, appeals a March 1, 2021, Board of Veterans' Appeals decision that declined to address the veteran's motion to revise a regional office (RO) decision based on clear and unmistakable error (CUE).[1] This appeal is timely, the Court has jurisdiction to review the Board's decision, and single-judge disposition is appropriate. *See* 38 U.S.C. §§ 7252(a), 7266(a); *Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990).

On May 16, 2022, we affirmed the Board's decision because the record supported its conclusion that Mr. Villanueva's CUE motion remained pending before the RO. We stated that the RO decision appealed to the Board addressed only a freestanding claim for an earlier effective date and there was no evidence that CUE was addressed in that or any other RO decision. Mr. Villanueva subsequently timely moved for reconsideration or, in the alternative, consideration by a panel of judges.

[1] The Board also dismissed a freestanding claim for an earlier effective date, but Mr. Villanueva makes no contentions of error about that part of the Board's decision, and the Court will not address it on appeal. *See Pederson v. McDonald*, 27 Vet.App. 276, 283 (2015) (en banc) ("[T]his Court, like other courts, will generally decline to exercise its authority to address an issue not raised by an appellant in his or her opening brief.").

On September 12, 2022, we withdrew our single-judge decision and instructed the Secretary to "inform the Court . . . about the status of the veteran's motion for revision based on CUE." *Villanueva v. McDonough*, No. 21-3663, 2022 WL 4130384 at *1 (Vet. App. Sept. 12, 2022). Two days later, the Secretary informed us that "the RO has not adjudicated the pending CUE motion." Appellee's Response at 1. The case was then submitted to a panel of judges and oral argument was scheduled.

On September 27, 2022, the panel granted an opposed motion by Mr. Villanueva for leave to respond to our September 12, 2022, order. In his response, Mr. Villanueva disputed the Secretary's factual representation that CUE was pending before the RO. He informed the Court that his review of VA's internal Veterans Benefit Management System (VBMS) showed that his CUE motion was decided by the RO before the Board decided its March 1, 2021, decision. According to the veteran, "the VBMS entries [show] that the RO properly coded, processed, and adjudicated [his] CUE motion on February 7, 2021." Appellant's Reply to Appellee's Response at 4. Subsequently, oral argument was canceled, and this appeal returned to the single judge for a memorandum decision.

We find that, given the parties' factual dispute over the status of the CUE claim, it is appropriate to remand for the Board to address that matter in the first instance. *See* 38 U.S.C. § 7252(a) (stating that the Court may remand as appropriate); *Maggitt v. West*, 202 F.3d. 1370, 1377-78 (Fed. Cir. 2000). "Sufficient factual findings on material issues are necessary to allow [an appellate] court to have a basis for meaningful review." *Nutrition 21 v. United States*, 930 F.2d 867, 869 (Fed. Cir. 1991). And here the Board did not address the parties' dispute over the VBMS entries or make findings based on those entries that the Court could review on appeal. *See* R. at 5-7. Remand therefore is warranted. *See* 38 U.S.C. § 7252(a); *see also Nutrition 21*, 930 F.2d at 869.

Because the claim is being remanded, the Court need not address the veteran's additional arguments about other inadequacies in the Board's statement of reasons or bases. *See Mahl v. Principi*, 15 Vet.App. 37, 38 (2001) (per curiam order) ("[I]f the proper remedy is a remand, there is no need to analyze and discuss all the other claimed errors that would result in a remedy no broader than a remand."). On remand, however, the veteran will be free to submit additional argument and evidence, to the extent allowable by law and binding precedent, and the Board must consider any such evidence or argument submitted. *See Kay v. Principi*, 16 Vet.App. 529, 534

(2002); *see also Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991) ("A remand is meant to entail a critical examination of the justification for the decision.").

II. CONCLUSION

For these reasons, the Board's March 1, 2021, decision is SET ASIDE, and the matter is REMANDED for further proceedings.

DATED: October 7, 2022

Copies to:

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