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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 21-5284

PABLO R. MARTINEZ,

APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before FALVEY, *Judge*.

ORDER

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

In an October 24, 2022, memorandum decision, the Court affirmed a May 20, 2021, Board of Veterans' Appeals decision that denied an effective date before February 9, 2010, for a total disability rating based on individual unemployability (TDIU). On November 14, 2022, Mr. Martinez moved for single-judge reconsideration or, in the alternative, for a panel decision.

Based on review of the pleadings and the record of proceedings, the Court concludes that the appeal raises an issue warranting a precedential decision. *See* U.S. VET. APP. R. 35(e); *Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). Specifically, the issue is the interplay between 38 U.S.C. § 7104(a) (a Board decision must be based on all evidence of record) and the Court's interpretation of 38 C.F.R. § 19.55 (withdrawal of appeal) in *Hembree v. Wilkie*, 33 Vet.App. 1 (2020). Thus, the single judge will sua sponte send the case to panel.

Thus, it is

ORDERED that the motion for single-judge reconsideration is granted and the motion for panel review is dismissed as moot. It is further

ORDERED that the October 24, 2022, single-judge decision is withdrawn. It is further

ORDERED that the Clerk of the Court issue an order submitting the case to panel.

DATED: November 18, 2022

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Joseph L. Falvey, Jr.", with a stylized flourish at the end.

JOSEPH L. FALVEY, JR.
Judge

Copies to:

Zachary M. Stolz, Esq.

VA General Counsel (027)