IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

RICHARD R. BERDY,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 22-1199
	)	
DENIS MCDONOUGH,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

APPELLEE'S RESPONSE TO THE COURT'S
NOVEMBER 30, 2022, ORDER

Appellee, Denis McDonough, Secretary of Veterans Affairs, submits this response to the Court's November 30, 2022, Order. The Order instructed the parties to provide a supplemental brief addressing whether the Board may or may not consider the ameliorative effects of medication when determining the proper disability rating in excess of 10% under 38 C.F.R. § 4.130. The Order also directed the parties to address the Court's decision in *Johnson v. Wilkie*, 30 Vet.App. 245 (2018), including how *Johnson* may inform whether the ameliorative effects of medication may be considered at all rating levels under 38 C.F.R. § 4.130.

As explained below, the Secretary's position is that the law and relevant Diagnostic Code (DC) make clear that the Board may consider the effects of medication when determining the proper disability rating under 38 C.F.R. § 4.130, and it properly did so here in evaluating the appropriate rating for Appellant's service-connected post-traumatic stress disorder (PTSD) disability.

A. The Board Properly Considered the Effects of Medication When Assessing Appellant's Increased Rating Claim for PTSD under 38 C.F.R. § 4.130, Diagnostic Code 9411 Because § 4.130 Contemplates the Effects of Medication.

Appellant's PTSD is evaluated under the General Rating Formula for Mental Disorders in 38 C.F.R. § 4.130, DC 9411. *See generally* [R. at 5-16 (1-18) (March 26, 2022, Board Decision)]. The General Rating Formula for Mental Disorders contemplates the effects of medication and must be read as a whole. *See* 38 C.F.R. § 4.130, DC 9411. Because the ultimate question is whether the DC at issue contemplates the effects of medication, which § 4.130 does, the Board's consideration of the effects of medication when denying Appellant's claim for a rating in excess of 50% for PTSD did not violate *Jones v. Shinseki*, 26 Vet.App. 56 (2012). *See* [R. at 13-16].

A review of the relevant cases is illuminating and dispositive on this matter. In *Jones*, the Court addressed whether the Board erred in considering the ameliorative effects of medication for an increased rating claim when the rating criteria under the DC at issue, 38 C.F.R. § 4.114, DC 7319, did not contemplate the effects of medication at any rating level. 26 Vet.App. at 61-63. Because the Board considered a factor "*wholly* outside the rating criteria," of DC 7319, the Court concluded that the Board erred when it considered the effects of medication. *Id.* at 61, 63 (emphasis added); *see also Massey v. Brown*, 7 Vet.App. 204, 208 (1994) ("The Board's consideration of factors which are wholly outside the rating criteria provided by the regulations is error as a matter of law.").

Notably, the Court in *Jones* identified examples of DCs where the Secretary demonstrated how to "include the effect of medication as a factor to be considered when

rating a particular disability." *Id.* at 62. One of these examples was 38 C.F.R. § 4.71a, DC 5025, which provides a 10% rating for fibromyalgia for symptoms "[t]hat require continuous medication for control." *Id.*; 38 C.F.R. § 4.71a, DC 5025. But, relevant to the Court's question in this instant case, the word "medication" does not appear in criteria for ratings higher than 10% under DC 5025. 38 C.F.R. § 4.71a, DC 5025. The criteria for a 20% rating does not mention medication or the effects of medication; the criteria for a 40% rating mentions "therapy" but not "medication." *Id.* Nonetheless, the Court in *Jones* still referred to DC 5025 as an example of a code that explicitly includes the effect of medication as a factor for consideration when rating that particular disability. *See id.*; *Jones*, 26 Vet.App. at 62.

The Court demonstrated this same understanding in its en banc decision in *McCarroll v. McDonald*, 28 Vet.App. 267 (2016). There, the Court held that because 38 C.F.R. § 4.104, DC 7101 for hypertension provides, inter alia, "continuous medication for control" as a criteria in the 10% evaluation level, the DC, when read as a whole, contemplates the effects of medication for all evaluation levels in assigning a disability rating. *Id*. at 272-73. In so doing, the Court explained that DC 7101 provided two factual alternatives. *Id*. at 272. The first is a veteran whose blood pressure is currently controlled by medication – i.e., would not otherwise qualify for a compensable rating – but who has a history of diastolic pressure of 100 or more, and is thus entitled to a minimum compensable 10% rating. *Id.*; *see also* 38 C.F.R. § 4.104, DC 7101. The second is where the veteran's blood pressure is currently elevated to varying degrees – i.e., not currently controlled by medication – to be entitled to evaluations ranging from 10% to 60%. *Id.*

Read together, the Court reasoned that both scenarios clearly contemplate the effects of medication: either a veteran's blood pressure is controlled by medication with a history of elevated diastolic pressure to warrant the minimum compensable rating of 10%, *or* the veteran's blood pressure is not controlled by medication, in which case the actual blood pressure level will determine the disability rating. *Id.*

As part of its reasoning, the Court in *McCarroll* also referenced *Jones* as supportive of its decision, explaining that DC 7101, like DC 5025, only explicitly references medication in its criteria for a 10% evaluation. *Id.* The Court thus clarified that even though DC 7101 explicitly referenced medication at only one rating level, the plain language of the DC read as a whole contemplated the effects of medication. *Id.* at 272-73; *see also Gardner v. Derwinski*, 1 Vet.App. 584, 587-88 (1991), *aff'd sub nom. Brown v. Gardner*, 513 U.S. 115 (1994) ("Where a statute's language is plain, and its meaning clear, no room exists for construction."); *Gazelle v. McDonald*, 27 Vet.App. 461, 464 (2016) (Statutes and regulations "must be considered as a whole and in the context of the surrounding statutory [and regulatory] scheme.").

As applied to the instant case, *Jones* and *McCarroll* are dispositive and help answer the question posed by the Court's November 2022 Order. Here, like DC 5025 in *Jones* and DC 7101 in *McCarroll*, DC 9411 for PTSD expressly contemplates the effects of medication and § 4.130 must be read as a whole. *See* 38 C.F.R. § 4.130, DC 9411.

Similar to DC 7101 in *McCarroll*, DC 9411 provides three factual alternatives for the relationship between medication and symptoms to assist the adjudicator in assessing the appropriate rating level. *See id.*; *McCarroll*, 28 Vet.App. at 272. First, if there is a

formal diagnosis but the PTSD symptoms do not require continuous medication to control, then a non-compensable rating is warranted. *Id.* Second, if the PTSD symptoms are controlled by continuous medication, then a 10% rating is warranted. *Id*. Lastly, if the PTSD symptoms are not controlled by continuous medication, then the symptoms are rated between 10% and 100% based on a "holistic analysis" of the symptoms and determination of the occupational and social impairment caused thereby. *Id.*; *Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 115-18 (Fed. Cir. 2013); *Bankhead v. Shulkin*, 29 Vet.App. 10, 22 (2017) (requiring VA to "engage in a holistic analysis" of the claimant's symptoms to determine the proper disability rating); *see also Mauerhan v. Principi*, 16 Vet.App. 436, 440-43 (2002).

Read together, all three scenarios under DC 9411 clearly contemplate the effects of medication: either a veteran's symptoms do not require continuous medication, warranting a non-compensable evaluation if there is a formal diagnosis of a mental disability, *or*, a veteran's symptoms require and are controlled by continuous medication, warranting a 10% evaluation, *or* a veteran's symptoms require but are not controlled by continuous medication, in which case the impact of such symptoms on occupation and social functioning determines the disability rating between 10% to 100%. *Id.*; *see also McCarroll*, 28 Vet.App. at 272; *Gardner*, 1 Vet.App. at 587-88; *Gazelle*, 27 Vet.App. at 464. In fact, the language for a 10% rating under DC 9411 – i.e., "controlled by continuous medication" – is substantially similar to that found in DC 5025 and DC 7101 and thus warrants the same assessment from *Jones* and *McCarroll* as contemplating the effects of medication such that the proscription against considering the effects of medication in *Jones*

does not apply. *See id.* at 272-73; 38 C.F.R. § 4.130, DC 9411; *see also Jones*, 26 Vet.App. at 62-63.

That 38 C.F.R. § 4.130 does not expressly mention medication at every rating level is of no consequence. Rating evaluation levels for mental disorders are not applied, and cannot be interpreted, in a vacuum. *See Vazquez-Claudio*, 713 F.3d at 117-18 (requiring not only the presence of symptoms, but that those symptoms have caused impairment warranting a higher rating); *Mauerhan*, 16 Vet.App. at 440-43 (holding that the symptoms in § 4.130 are not exhaustive and that the Board must consider all the evidence of record to determine the nature of a claimant's disability picture); *see also Bankhead*, 29 Vet.App. at 22 (requiring a holistic analysis of a claimant's disability). Indeed, the en banc Court in *McCarroll* has already answered the underlying legal question, holding that the diagnostic code must be read as a whole. *McCarroll*, 28 Vet.App. at 272.

Thus, because 38 C.F.R. § 4.130, DC 9411, expressly contemplates the effects of medication in at least one rating evaluation level, this diagnostic code, read as a whole, contemplates the effects of medication in assigning disability ratings for PTSD and there is no *Jones* violation of importing a factor "wholly outside the rating criteria" into this DC. *Jones*, 26 Vet.App. at 62-63; *McCarroll*, 28 Vet.App. at 272-73. Moreover, although Court memorandum decisions are nonprecedential authority and *Jones* and *McCarroll* are already dispositive, the Secretary further highlights as relevant for the Court that it has recognized in several memorandum decisions that DCs rated under 38 C.F.R. § 4.130 do contemplate the effects of medication, including expressly rejecting any argument that the effects of

medication may only be considered for a non-compensable or 10% rating under DC 9411.

See U.S. Vet. App. Rule 30(a).[1]

[1] *See, e.g.*, *George v. Wilkie*, Docket No. 17-0765, 2018 U.S. App. Vet. Claims LEXIS 709, at *11-15 (May 29, 2018) (holding that *Jones* is not applicable because the rating schedule for psychological disorders explicitly contemplates the effects of medication); *Lewallen v. Shulkin*, Docket No. 16-3840, 2018 U.S. App. Vet. Claims LEXIS 293, at *18-19 (March 14, 2018) (holding that *Jones* did not apply to the Board's consideration of the effects of medication in its denial of a rating in excess of 30% for PTSD because DC 9411, like DC 7101 in *McCarroll*, lists "symptoms controlled by continuous medication" as a criteria in the 10% evaluation level to contemplate the effects of medication in at least one evaluation level); *Nickerson v. Shulkin*, Docket No. 16-2216, 2017 U.S. App. Vet. Claims LEXIS 1508, at *6-8 (October 19, 2017) (holding that *Jones* did not apply to the Board's consideration of the effects of medication in its denial of a rating in excess of 70% for PTSD because like DC 5025 in *Jones* that the Court found to contemplate the effects of medication, DC 9411 expressly authorizes VA to account for the effects of medication in evaluating mental disorders even though it does not mention medication at every rating level); *Reyno v. Shulkin*, Docket No. 16-1231, 2017 U.S. App. Vet. Claims LEXIS 1136, at *4-5, 9-12 (August 2, 2017) (holding that *Jones* did not apply to the Board's consideration of the effects of medication in its denial of a rating in excess of 50% for major depressive disorder (MDD) under § 4.130, DC 9434 because like DC 5025 in *Jones* that the Court found to contemplate the effects of medication, DC 9434 expressly authorizes VA to account for the effects of medication in evaluating mental disorders); *Morales v. McDonald*, Docket No. 15-4813, 2016 U.S. App. Vet. Claims LEXIS 1811, at *1, 4 (November 29, 2016) (holding that *Jones* did not apply to the Board's consideration of the effects of medication in its denial of a rating in excess of 50% for generalized anxiety disorder because the rating criteria for generalized anxiety disorder under § 4.130, DC 9400 include consideration of the effects of medication at the non-compensable and 10% rating levels); *Podmore v. McDonald*, Docket No. 14-3253, 2016 U.S. App. Vet. Claims LEXIS 21, at *1, 7 (January 11, 2016) (holding that *Jones* did not apply to the Board's consideration of the effects of medication in its denial of a rating in excess of 30% for PTSD because the rating criteria for PTSD under DC 9411 include consideration of the effects of medication at the non-compensable and 10% rating levels); *Sims v. McDonald*, Docket No. 13-3353, 2015 U.S. App. Vet. Claims LEXIS 109, at *20-22 (January 30, 2015) (holding that *Jones* did not apply to the Board's consideration of the effects of medication in its denial of a rating in excess of 70% for PTSD because like DC 5025 in *Jones* that the Court found to contemplate the effects of medication, DC 9411 expressly authorizes VA to account for the effects of medication in evaluating mental disorders).

Based on the foregoing, the Board permissibly considered the effects of medication to determine that the weight of the evidence did not warrant a rating in excess of 50% for PTSD prior to April 25, 2017, under § 4.130, DC 9411. *See Jones*, 26 Vet.App. at 62-63; *McCarroll*, 28 Vet.App. at 272-73. In the absence of a *Jones* violation and consistent with *McCarroll*, the Board did not commit clear error when considering the effects of medication. *See* [R. at 5, 13-16]; *Smallwood v. Brown*, 10 Vet.App. 93, 97 (1997) (The determination of whether a claimant is entitled to an increase in a schedular disability rating is a question of fact subject to the "clearly erroneous" standard of review); 38 U.S.C. § 7261(a)(4). In fact, the record reflects, and Appellant does not dispute, that Appellant was taking medication to treat his PTSD symptoms during the relevant period on appeal – i.e., prior to April 25, 2017. *See generally Appellant's Br.*, at 6-12; *Appellant's Supplemental Br.*, at 1-9; *see also generally*, *e.g.*, [R. at 2866, 2868 (2864-70) (April 2014 Psychiatry Note) (Appellant is improving with current medications and decrease in PTSD symptoms with medication and therapy)]; [R. at 2751 (2748-55) (January 2015 Department of Veterans Affairs (VA) Examination) (noting medication usage)]; [R. at 1354-55 (1353-55) (April 2015 Psychiatry Note) (noting no side effects from medication and Appellant is improving with current medications and decrease in PTSD symptoms with medication and therapy)]; [R. at 1193-94 (1192-95) (January 2017 Psychiatry Note) (noting medication usage to address PTSD symptoms)]. Thus, the Court should affirm the Board's decision.

B. The Court's Decision in *Johnson* is Not Dispositive of Whether a *Jones* Violation Occurs.

Although the Secretary submits that 38 C.F.R. § 4.130 is effectively successive in terms of increased impact of symptoms on occupational and social impairment for higher ratings and the aforementioned three factual alternatives for consideration of medication use, the Court need not answer this question because *Johnson* is not dispositive and a *Jones* violation does not occur when the Board considers the effects of medication in evaluating a mental disorder rated under § 4.130.

In *Johnson*, the Court enumerated three factors for assessing whether the rating criteria for a disability are successive. 30 Vet.App. at 250-51. The first factor is the degree to which the criteria in lesser disability ratings are repeated or incorporated into the higher disability rating under consideration; the second factor is whether awarding a disability rating on less than all the rating criteria would render a lesser disability rating superfluous; and, the third factor is whether the higher rating employs a conjunctive 'and' in a manner that signals bundling of all the rating factors in that disability rating. *Id.* The Court also noted that these are just general principles, not necessarily required in every instance. *Id*.

First, it bears noting that although *Johnson* set forth factors for determining whether rating criteria is successive and was issued after the *Jones* and *McCarroll* decisions, the term "successive" as well as its meaning, was already in existing caselaw when *Jones* and *McCarroll* were issued. *See e.g.*, *Tatum v. Shinseki*, 23 Vet.App. 152 (2009); *Camacho v. Nicholson*, 21 Vet.App. 360 (2007). Nevertheless, neither the Court in *Jones* nor the en banc Court in *McCarroll* held that to be a relevant consideration when addressing whether

the rating criteria in a DC contemplates the effect of medication. In fact, neither case even mentions the word "successive". As a result, the Secretary posits that the question of whether rating criteria are successive is irrelevant when determining whether the Board has impermissibly considered a factor "wholly outside the rating criteria" thus committing a *Jones* violation. Thereby, *Johnson* is inapplicable and not dispositive of the *Jones* question posed by the Court's November 2022 Order.

Second, to the extent the Court is still interested in whether § 4.130 is successive, the Secretary answers that it is, with some unique components that make it somewhat different than other traditionally "successive" DCs. When assessing a mental disorder under 38 C.F.R. § 4.130, the General Rating Formula outlines six disability levels. All six levels do mention occupational and social impairment. Initially, in order to receive even a non-compensable rating, there must be a formal diagnosis. *Martinez-Bodon v. Wilkie*, 32 Vet.App. 393, 400 (2020), *aff'd sub nom. Martinez-Bodon v. McDonough*, 28 F.4th 1241 (Fed. Cir. 2022). And although a formal diagnosis is only specified under the non-compensable rating criteria in § 4.130, this Court and the Federal Circuit both recognized that the requirement of a formally diagnosed condition must be read into each rating level – i.e., as a successive criteria – as it would be illogical to require a formal diagnosis for a non-compensable rating but not for a higher rating. *Id.* at 400-01, 404; *Martinez-Bodon*, 28 F.4th at 1245-47.[2] From there, each successive non-zero evaluation requires an

[2] Appellant seems to recognize that a formal diagnosis is required for all ratings under § 4.130, and yet does not acknowledge that it is not specified in any rating criteria other than the non-compensable one. *See Appellant's Supplemental Br.*, at 4.

increasing severity of symptoms and corresponding degree of occupational and social impairment. *See Vazquez-Claudio*, 713 F.3d at 116; *see also id.* at 400. Indeed, the "upwardly cascading" structure of § 4.130 "with symptoms and occupational and social impairments increasing in severity with each step up in rating" reflects, at its core when read as a whole, a successive rating structure for requiring an increasing level of occupational and social impairment to obtain the next highest rating. *See Martinez-Bodon*, 28 F.4th at 1246; *see also Gardner*, 1 Vet.App. at 587-88; *Gazelle*, 27 Vet.App. at 464.

What then makes § 4.130 unique is the Court's holding that § 4.130 contains a non-exhaustive listing of symptoms that serve as examples of the type and degree of the symptoms that may justify a particular rating. *Mauerhan*, 16 Vet.App. at 442-43; *see Vazquez-Claudio*, 713 F.3d at 117 (explaining that the symptoms that could give rise to a given rating are those in like kind, i.e., of similar duration, severity, and frequency, to those provided in the non-exhaustive lists); *see also Bankhead*, 29 Vet.App. at 22. Because those symptoms listed in the rating criteria are non-exhaustive, the evidence considered in determining the level of occupational and social impairment under § 4.130 is not limited to those symptoms listed in the General Rating Formula such that a veteran may even obtain a higher rating without necessarily demonstrating all of the symptoms listed at the lower rating level.

Thus, it is the unique nature and structure of § 4.130 of requiring not only the presence of the particular symptoms listed in the diagnostic criteria or symptoms of the same or similar kind, but also that those symptoms have caused the level of occupational and social impairment to qualify for that evaluation that renders *Johnson* not perfectly

applicable for assessing whether § 4.130 is successive. *Vazquez-Claudio*, 713 F.3d at 117-18; *see Amberman v. Shinseki*, 570 F.3d 1377, 1380 (Fed. Cir. 2009) ("With respect to mental disorders, the amount of impairment is measured by the social and occupational difficulties caused by the veteran's disorder." (citing 38 C.F.R. § 4.130)).

Notwithstanding whether *Johnson* is perfectly applicable to assess whether § 4.130 is successive, as explained above, the effects of medication as a criteria for consideration also permeates the entirety of 38 C.F.R. § 4.130, DC 9411, when read as a whole and considering the structure of the regulation. Again, although medication is not explicitly mentioned at each rating level, the Court in *Jones* and *McCarroll* found DCs that also did not expressly mention medication at every rating level – in fact, both DCs only explicitly mentioned medication at one rating level – as contemplating the effects of medication for the entire DC. *See Jones*, 26 Vet.App. at 62-63; *McCarroll*, 28 Vet.App. at 272-73. Thus, for the issue in dispute of whether the Board may consider the ameliorative effects of medication when determining the proper disability rating in excess of 10% under 38 C.F.R. § 4.130, the Secretary reiterates that *Jones* and *McCarroll* clearly demonstrate that the Board may do so because § 4.130 expressly contemplates the effects of medication in at least one evaluation level such that medication was not imported as a factor *wholly* outside of the rating criteria, and therefore, does not implicate a *Jones* violation. *Id.*

Moreover, Appellant's argument that the Board may not consider the effects of medication for a rating in excess of 10% under § 4.130 is illogical because it prohibits the Board from considering and rating the actual level of disability a veteran is currently experiencing under this DC. *Appellant's Supplemental Br.*, at 7-9; *see Vazquez-Claudio*,

713 F.3d at 117-18; *Mauerhan*, 16 Vet.App. at 440-43; *Bankhead*, 29 Vet.App. at 22. For example, in this appeal, the Board granted Appellant an increased rating of 50% for PTSD prior to April 25, 2017, but denied a rating in excess of that. [R. at 5-16]. In doing so, the Board commented that the evidence of record showed that Appellant's reported PTSD symptoms were managed successfully with medication. [R. at 14]. Moreover, the Board noted that Appellant specifically reported improvement with nightmares through medication, that his wife also noted his mood improved, and that mental status examinations during that time period confirmed PTSD symptom improvement. [R. at 14-15]. Symptoms controlled or resolved with medication cannot serve to justify a higher rating under § 4.130 because they would not have corresponding social and occupational impairment. Indeed, if all of Appellant's symptoms were controlled by continuous medication, then the rating criteria could permit the Board to only grant a 10% rating. Thus, the Board's commentary on the effects of medication only served to emphasize that Appellant is already in receipt of a rating that contemplates his specific disability picture.

Appellant's other arguments similarly miss the point. Although he asserts that § 4.130, DC 9411 allows for ratings greater than 10% without required medication use, *see Appellant's Supplemental Br.*, at 5, he misses that § 4.130 already specifies that if "symptoms are not severe enough….to require continuous medication," then a non-compensable rating is appropriate. And while he appears to emphasize a veteran's "choice to use medicine," *see Appellant's Supplemental Br.*, at 7, the word "choice" is not in § 4.130. In contrast, the word "require" is used. Further, Appellant also states that the rating assigned should be based on symptoms, not simply medication. *See Appellant's*

Supplemental Br., at 8. But Appellant's argument there only supports the third factual alternative discussed above that § 4.130 includes the consideration of whether – despite medication – an individual still has symptoms and if so, the impact of those symptoms on occupational and social functioning. This makes sense given a maximum 10% rating is warranted if the symptoms are controlled by continuous medication, logically leading to the conclusion that higher ratings contemplate symptoms that are not controlled by continuous medication.

Preventing the Board from considering the effects of medication for a rating in excess of 10% contravenes the contemplation of the effects of medication and corresponding assessment structure set forth in the plain language of § 4.130 when read as a whole and the Court's holdings in *Jones* and *McCarroll*. Moreover, it would lead to the untenable result of precluding adjudicators from considering a veteran's actual disability picture. Indeed, the adoption of Appellant's argument would invite medical speculation from the Board and undoubtably lead to inconsistent results. *See McCarroll*, 28 Vet.App. at 278 (Kasold, C.J. concurring) (Directing VA not to consider the effects of medication in assessing ratings for a disability "invites medical speculation in trying to guess what a veteran's symptoms might be without the medication, or medical malpractice in the cessation of medication so that the veteran's symptoms without medication might be recorded. The former invites non-helpful guesswork by medical practitioners, *see also Hood v. Shinseki*, 23 Vet.App. 295, 298-99 (2009) (medical opinions that are speculative have 'little probative value'), and the latter raises, at a minimum, serious ethical concerns that no court should encourage.").

Based on the foregoing, the plain language, structure, and assessment scheme for mental disorders under 38 C.F.R. § 4.130 is successive because every level contemplates increased occupational and social impairment in an upwardly cascading structure. However, *Johnson* is not perfectly applicable for assessing whether the unique, hybrid structure of § 4.130 is successive because the symptom lists provided are non-exhaustive. Notwithstanding whether § 4.130 is successive under *Johnson*, *Jones* and *McCarroll* support that § 4.130 in its entirety contemplates the effects of medication such that the proscription in *Jones* does not apply. And again, neither *Jones* nor *McCarroll* commented on whether the DCs reviewed were "successive" as part of their analysis and conclusion.

Accordingly, the Secretary submits that the Board may consider the effects of medication in assessing whether a rating in excess of 10% is warranted under § 4.130, and properly did so here in concluding that the weight of the evidence did not support a rating in excess of 50% for PTSD prior to April 25, 2017.

WHEREFORE, Appellee, Denis McDonough, Secretary of Veterans Affairs, respectfully responds to the Court's November 30, 2022, Order.

Respectfully submitted,

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