

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

No. 21-4193

FRANKLIN A. GREEN,

APPELLANT,

v.

DENIS McDONOUGH,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before PIETSCH, GREENBERG, JAQUITH, *Judges*.

**ORDER**

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

On November 4, 2022, the Court ordered this case to be submitted to a panel. On January 25, 2023, the Court scheduled oral argument for April 19, 2023. On March 6, 2023, the parties submitted a motion for clarification of the issues for oral argument. In addition to the issues briefed, the Court asks the parties to be prepared to discuss the following issues at oral argument:

In the context of the continually adjudicated claim for a total disability rating based on individual unemployability (TDIU), does the operation of the Veteran Appeals Improvement and Modernization Act of 2017 (AMA), Pub. L. No. 115-55., result in any preclusive effect on the effective date issue from the Board's denial of TDIU? Does there remain any ongoing case or controversy before this court?

If there does remain an ongoing case and controversy, does the AMA grant the Board jurisdiction to decide the issue of TDIU when VA had not yet considered the matter of establishing a disability rating for any service-connected condition? If the Board did have jurisdiction to affirm a decision review officer's denial of TDIU prior to the establishment of service connection for the underlying condition, can the Board's decision be reconciled with the long-established view that the evaluation of a disability is a downstream issue from service-connection and that TDIU is part and parcel of the underlying rating? *See Grantham v. Brown*, 114 F.3d 1156, 1158-59 (Fed. Cir. 1997); *Barrera v. Gober*, 122 F.3d 1030, 1032 (Fed. Cir. 1997); *Rice v. Shinseki*, 22 Vet.App. 447, 453-54 (2009).

If the Board had jurisdiction to affirm the denial of TDIU, was it correct when it determined that it could not consider its grant of entitlement to service connection

for an acquired psychiatric disorder because, the Board reasoned, "the claim must be decided back on the state of the evidence that was before the RO (or was submitted as part of the AMA appeal)" and the grant of service connection was not part of the evidence before the RO?

Upon consideration of the foregoing, it is

ORDERED that the parties be prepared to discuss the issue set forth above.

DATED: April 4, 2023

PER CURIAM.

Copies to:

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VA General Counsel (027)