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On appeal from the  
Department of Veterans Affairs Regional Office in St. Petersburg, Florida

## THE ISSUE

Entitlement to service connection for multiple sclerosis (MS).

## REPRESENTATION

Veteran represented by: Sean Kendall, Attorney at Law

## ATTORNEY FOR THE BOARD

Jennifer R. White, Counsel

## INTRODUCTION

The Veteran had active service from June 8, 1970 to July 30, 1970.

This matter came before the Board of Veterans' Appeals (Board) on appeal from decision of November 2009 by the Department of Veterans Affairs (VA) St. Petersburg, Florida, Regional Office (RO).

The Veteran's claim for reopening was granted and the claim for entitlement to service connection for MS on the merits was remanded by an August 2011 Board decision. The claim has been returned to the Board for further appellate review.

The appeal is REMANDED to the Department of Veterans Affairs Regional Office. VA will notify the Veteran if further action is required.

## REMAND

The Veteran and his representative contend that the Veteran's multiple sclerosis is related to his military service secondarily to his service connected migraine headaches (30 percent disability rating) and brow ptosis, left eye associated with left eyebrow scar, residuals of head laceration (noncompensable disability rating).

Service connection may be granted for a disability resulting from injury or disease incurred in or aggravated by active service. 38 U.S.C.A. §§ 1110, 1131; 38 C.F.R. § 3.303. To establish service connection for the claimed disorder, there must be medical evidence of a current disability; medical or, in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and medical evidence of a nexus between the claimed in-service disease or injury and the current

disability. 38 C.F.R. § 3.303 (2013); see also *Hickson v. West*, 12 Vet. App. 247, 253 (1999). Service connection may also be granted for disability shown to be proximately due to, or the result of, a service-connected disorder, or for the degree of additional disability resulting from aggravation of a non service-connected disorder by a service-connected disorder. See *Allen v. Brown*, 7 Vet. App. 439 (1995).

Multiple sclerosis may be presumptively service connected if it becomes manifest to a degree of 10 percent or more within seven year of leaving qualifying military service. 38 C.F.R. §§ 3.307(a)(3); 3.309(a) (2013). The appellant in this appeal had less than 90 days of active service, having served from June 8, 1970 to July 30, 1970. Therefore, this presumption is inapplicable.

A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim but (1) contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability; (2) establishes that the veteran suffered an event, injury, or disease in service; and (3) indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability. 38 C.F.R. § 3.159(c)(4).

Unfortunately, a remand is required in this case. Although the Board sincerely regrets the additional delay, it is necessary to ensure that there is a complete record upon which to decide the veteran's claim so that he is afforded every possible consideration. VA has a duty to assist claimants in obtaining evidence needed to substantiate a claim. 38 U.S.C.A. §§ 5107(a) 5103A (West 2002); 38 C.F.R. § 3.159(c) (2013).

As stated above, the Veteran submitted a claim to reopen his claim for entitlement to service connection for multiple sclerosis in January 2009. He provided an October 2000 letter from Dr. C. N. B. stating that the symptoms of headaches and diminished visual acuity were the first symptoms of his multiple sclerosis.

The Veteran was afforded a VA examination in July 2009, where the VA examiner (who did not have an opportunity to review the evidence of record at this time), upon a physical examination, the Veteran's statements, and review of the medical literature, determined the Veteran did not have a diagnosis of multiple sclerosis. In October 2009, the same VA examiner submitted an addendum to the July 2009 VA examination report, stating that after an "[e]xhaustive page by page review of the [claims file], [service medical records, and medical literature... [t]his did not alter my opinion(s): 1. The [Veteran] does not have multiple sclerosis, 2. there was no noted ptosis of this left eye while in military service, 3. [i]f the [Veteran] did have multiple sclerosis, it is not due to the laceration sustained to the supra orbital eyebrow area of the left eye. If the [Veteran] did have multiple sclerosis, it is not due to any ptosis that may have been present."

The Board remanded the claim for an additional medical opinion and/or addendum. Unfortunately, the resulting May 2012 examination report has several flaws. There is no indication that the examiner reviewed the claims file in its entirety, the report is internally inconsistent in that the examiner indicates the Veteran does not have MS but then goes on to indicate that the Veteran's MS impacts his ability to work, the examiner did not address the existence of diagnoses of MS from the multiple medical professionals, and the examiner cites to medical evidence and objective testing conducted prior to the relevant period (the current date of claim for service connection for MS is January 2009).

The Veteran has additionally submitted another private medical note dated May 2013 indicating that he has MS.

Therefore, the Board finds an additional addendum to the May 2012 VA examination is necessary.

The Board's remand conferred on the Veteran the right to compliance with the remand orders, as a matter of law. See *Stegall v. West*, 11 Vet. App. 268, 271 (1998). However, as already explained herein, the Board's remand orders were not fully complied with. Thus, the AOJ is required to conduct the development requested by the Board in order for the veteran's claim to be fully and fairly adjudicated.

Accordingly, the case is REMANDED for the following action:

1. The RO must request an opinion from the same VA examiner who conducted the May 2012 examination. In an addendum, the examiner should specifically address the findings and opinions from private physicians Drs. C. N. Bash, N. Urich, S. Vettichira, and V. Kabaria, who have confirmed the diagnosis of multiple sclerosis.

The VA examiner is also asked to review all evidence within the Veteran's claims file, which includes numerous VA treatment records which diagnose the Veteran with multiple sclerosis. In addition, the VA examiner is asked to address the evidence in relation to whether it is as likely as not (should the diagnosis of multiple sclerosis is confirmed) that the Veteran's disability is related to his service-connected disabilities of migraine headaches and brow ptosis, left eye associated with left eyebrow scar, residuals of head laceration or manifested during his service, from June 8, 1970 to July 30, 1970.

The entire claims file and a complete copy of this remand must be made available to and reviewed by the examiner in conjunction with the examination and this fact should be acknowledged in the report. If the examiner determines that a new examination is required, or the same examiner is not available, a new comprehensive examination must be conducted. All testing deemed necessary by the examiner should be performed and the results reported in detail. Furthermore, a complete rationale should be given for all opinions and conclusions expressed.

2. After completion of the above and any additional development deemed necessary, the expanded record should be reviewed and it should be determined if the Veteran's claim can be granted. If the claim is not granted, the Veteran and his representative should be furnished an appropriate supplemental statement of the case (SSOC), and be afforded an opportunity to respond. Thereafter, the case should be returned to the Board for appellate review.

The Veteran has the right to submit additional evidence and argument on the matter or matters the Board has remanded. *Kutscherousky v. West*, 12 Vet. App. 369 (1999).

This claim must be afforded expeditious treatment. The law requires that all claims that are remanded by the Board of Veterans' Appeals or by the United States Court of Appeals for Veterans Claims for additional development or other appropriate action must be handled in an expeditious manner. See 38 U.S.C.A. §§ 5109B, 7112 (West Supp. 2013).

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JAMES A. MARKEY

Veterans Law Judge, Board of Veterans' Appeals

Under 38 U.S.C.A. § 7252 (West 2002), only a decision of the Board of Veterans' Appeals is appealable to the United States Court of Appeals for Veterans Claims. This remand is in the nature of a preliminary order and does not constitute a decision of the Board on the merits of your appeal. 38 C.F.R. § 20.1100(b) (2013).