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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 12-3738

MICHAEL J. STRONG, APPELLANT,

v.

ERIC K. SHINSEKI,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before HAGEL, *Judge*.

MEMORANDUM DECISION

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

HAGEL, *Judge*: Michael J. Strong appeals through counsel a November 19, 2012, Board of Veterans' Appeals (Board) decision denying entitlement to VA disability benefits for hepatitis C. Mr. Strong's Notice of Appeal was timely, and the Court has jurisdiction to review the Board decision pursuant to 38 U.S.C. § 7252(a). Neither party requested oral argument, nor have the parties identified issues that they believe require a precedential decision of the Court. Because the Board failed to ensure substantial compliance with the Court's April 2011 and the Board's October 2011 remand orders, erred in finding the January 2012 VA examination adequate, and provided inadequate reasons or bases for its decision, the Court will vacate the November 2012 Board decision and remand the matter for further development and readjudication consistent with this decision.

The Court is very aware of the difficulty in substantiating an opinion, such as whether there is a nexus between Mr. Strong's hepatitis C and his military service. This case is particularly difficult given the nature of the disability at issue. However, any opinion, positive or negative, must have a reliable basis upon which to stand. This is the second time that this appeal is being remanded for further development. In its last remand order, the Court pointed to specific tasks that must be completed to ensure a reliable medical nexus opinion could be obtained. Because these items were

not sufficiently addressed, the Court, with great reluctance, must return the case to the Board, again with specific instructions aimed at ensuring that the Board can reach a supportable conclusion. The specific directives described herein are not all-inclusive nor limiting. If the Board believes that other information is necessary or would assist with the resolution of this appeal, it may, of course, pursue it as well.

I. FACTS

Mr. Strong served in the Army National Guard from July 1977 to October 1980 with periods of active duty for training from September 1977 to December 1977 and from January 7 to January 21, 1978. According to the Board, "the procedural history of this case requires clarification." Record (R.) at 4. The Board stated:

[Mr. Strong] originally filed a claim of entitlement to service connection for hepatitis C in October 2003. The [regional office] sent October 2003 and December 2003 duty-to-assist letters asking [Mr. Strong] . . . to identify in-service risk factors allegedly responsible for his hepatitis C. He did not respond and the claim was denied in a March 2004 rating decision. Thereafter, [Mr. Strong] submitted statements in October 2004 in support of his claim and specifically in response to the 2003 duty-to-assist letters. The [regional office] treated the October 2004 statements as a new claim and again denied the claim in an August 2005 rating decision. Thereafter, the claim was ultimately properly and timely appealed to the Board. Although the October 2004 statements submitted by [Mr. Strong] did not indicate specifically [that] he "disagreed" with the original March 2004 rating decision, it is clear he did disagree with the denial and was responding to the [regional office]'s request to identify risk factors and medical treatment. Given the circumstances, the Board concludes this appeal properly stems from the March 2004 rating decision.

R. at 4-5. This summary is supported by the record of proceedings.

Of particular relevance to the issue on appeal, in a December 2004 statement in support of his claim, Mr. Strong wrote:

[I]n November of 197[7] . . . I was hospitalized for symptoms of stomach pain, a chronic cough, and a reduced body temperature. . . . I recall feeling very cold at the time and thought that I [might] have pneumonia. At the time these symptoms were thought to be related to the flu or other common disease. In hindsight, I now feel that these were the earliest signs of my hepatitis C. . . .

There are a number of other events during service that I feel may have caused the hepatitis C.

During my reserve duties, I shared shaving razors with other [soldiers] on several occasions.

Please also note that, in about September of 1977, a member of my unit went to the bathroom and slashed his wrists in an apparent suicide attempt. I was a member of a small group that was ordered to clean up the mess. The soldier who slashed his wrist[s] was a member of my platoon and company.

In addition, throughout my Reserve training, I recall that all members of my unit frequently cut their hands. I believe that I was exposed to their blood during the course of my training.

R. at 964.

In July 2005, Mr. Strong underwent a VA examination to determine whether his hepatitis C is related to service. The entirety of the examiner's report is as follows:

This is an opinion. The [claims] file and available medical records were reviewed. The veteran was diagnosed with hepatitis C in 2000. [He] states he shared razors during his military career dating September 11, 1977[,] through December 11, 1977. [He] states he has no other risk factors and that he did not use cocaine. However, review of his medical records reveals an extended history of abuse of cocaine with his first hospitalization for cocaine[-]related hospitalization occurring in 1985 and the last available record for cocaine[-]related hospitalization in 1994. Therefore, it is at least as likely as not that the current hepatitis C condition is related to his extensive cocaine use, which is well documented. The veteran states that he shared razors during his military career[,] but there is no objective record of this actually taking place, and the veteran has already proven to have, at best, an unreliable memory.

R. at 914.

In April 2009, the Board determined that Mr. Strong was first diagnosed with hepatitis C in 2000, two decades after his military service, but acknowledged his assertions that he has experienced symptoms he believed to be evidence of hepatitis C since service. The Board also noted Mr. Strong's assertions that he (1) shared razors with other soldiers in service, and (2) had been required to clean up the blood of another soldier who had attempted suicide. However, the Board found no evidence

of either of these events in Mr. Strong's "service treatment records," nor evidence of a chronic condition that began in service. R. at 785.

The Board then listed various risk factors for hepatitis C, including intravenous drug use, intranasal cocaine use, accidental exposure (as in the case of a health care worker), and shared toothbrushes or razors. The Board then noted that, after service, Mr. Strong had a "lengthy history of alcohol and drug abuse, specifically cocaine," for which he underwent "lengthy hospitalization treatments numerous times." R. at 786. The Board acknowledged Mr. Strong's statements that he never used cocaine intravenously or intranasally. The Board then noted that the July 2005 VA medical examination report found Mr. Strong to be a poor historian and that his hepatitis C was likely related to his years of cocaine abuse. The Board found Mr. Strong not credible based on inconsistent statements and found no medical evidence that his current hepatitis C was related to any incident of his military service. Accordingly, the Board denied his claim. Mr. Strong appealed to the Court.

In April 2011, the Court vacated and remanded the April 2009 Board decision. The Court concluded that the Board erred in determining that VA satisfied its duty to assist and erred in finding that the July 2005 VA examination was adequate. The Court stated:

First, there is no reason to believe that a soldier's sharing of razors with other soldiers would be documented in the soldier's service medical records, and this absence of "corroboration" cannot be dispositive. Second, the examiner did not discuss the risk factors for hepatitis C at all, including the relative level of risk involved in intravenous or intranasal cocaine use versus the level of risk involved in smoking cocaine, which is how Mr. Strong has consistently alleged he abused the drug. Therefore, the examiner's conclusion that Mr. Strong's hepatitis C is more likely than not related to his drug abuse is presented without any rationale and renders the opinion inadequate. Accordingly, it was error for the Board to rely on the July 2005 VA examination report to deny Mr. Strong's claim.

Given that the Board relied heavily on an inadequate medical opinion to deny Mr. Strong's claim for benefits, the Court will vacate the Board's decision denying entitlement to benefits for hepatitis C and remand the matter for further development and readjudication. The Board should provide Mr. Strong a new VA examination or opinion that discusses the risk factors for hepatitis C, takes into account all of Mr. Strong's reported risk factors, and provides an etiology opinion that is supported by adequate explanation and rationale.

Although the Court is remanding Mr. Strong's claim, the Court is compelled to address his argument that the Board erred in finding that VA satisfied its duty to assist. The Court agrees. In his December 2004 statement, Mr. Strong stated that, in September 1977, a member of his "platoon and company" attempted suicide by slashing his wrists and that he was among the men tasked with cleaning up the soldier's blood. The Board denied Mr. Strong's claim, in part, because there was no documentation of this in his "service treatment records." The Court is dismayed that the Board provided such a patently illogical reason for denying Mr. Strong's claim. The notation of *another soldier's* attempted suicide is not the kind of information one would expect to find in *Mr. Strong's* service records. Mr. Strong provided a sufficiently small window of time (September 1977) and, perhaps, sufficient information about the other soldier (a member of his "platoon and company") for VA to request further information about the incident from the Army National Guard. There is no record that such an inquiry was ever made and the Board does not discuss any attempts to obtain this information. Given that the Board denied Mr. Strong's claim in part because it found him to be not credible with respect to certain facts, it is inexcusable for VA to fail to attempt to obtain information that might both boost Mr. Strong's credibility and provide evidence in support of his claim. Accordingly, the Court concludes that the Board's determination that VA satisfied its duty to assist Mr. Strong is clearly erroneous. On remand, VA will, in compliance with its duty to assist under 38 U.S.C. § 5103A, request any necessary additional information from Mr. Strong and then attempt to obtain Army National Guard records regarding the attempted suicide incident Mr. Strong identified.

R. at 738-40 (citations omitted).

In October 2011, pursuant to the Court's April 2011 remand order, the Board remanded the matter to the regional office to obtain records that would be helpful in determining if the September 1977 suicide attempt occurred. Specifically, the Board stated that the regional office "should ask the Army National Guard, [the National Personnel Records Center,] or any other appropriate agency to provide [Mr. Strong]'s September 1977 unit records and morning reports to determine whether a suicide attempt of one of the servicem[e]n is documented." R. at 171. The Board also requested that the regional office obtain a new VA examination to determine if it is more likely than not that Mr. Strong's hepatitis C is "related to his claimed in-service cold symptoms, sharing of razor blades and/or cleaning up blood after a failed suicide attempt by a fellow serviceman in September 1977 (or any other incident of his military service) versus post-military exposure to relevant risk factors, to include cocaine abuse." R. at 172.

In January 2012, Mr. Strong underwent a VA examination. R. at 86. The examiner stated:

There is no documentation within the medical record of the patient having shared razors, if this had occurred, this would be considered an inefficient vector at best.

He also states that he helped clean up blood products resulting from the attempted suicide of a fellow soldier. This involved using a mop, towels, and bleach. He was not exposed to any needle sticks. There is no documentation in the medical record regarding this event, however from his description of the event (using a mop, towels and bleach), it is unlikely that he has had any significant exposure to blood products, given that hepatitis C is not spread through intact skin or mucus membrane.

Patient has a long history of drug and alcohol abuse and multiple admissions for detox in the 1980's. While he denies IV drug abuse, he freely admits to smoking crack cocaine. Crack smokers use glass pipes to inhale the smoke. The pipes heat up and cause superficial burns on the lip. Sharing pipes carries the risk of transmitting hepatitis C.

Most patients are asymptomatic after exposure to hepatitis C. Approximately 20-30% of those newly infected experience fatigue, abdominal pain, poor appetite or jaundice. The veteran only reports some very non-specific "cough and cold" symptoms while serving in the military. Cough and cold symptoms are not indicative of hepatitis C.

R. at 93-94. The examiner then concluded that "it is more likely than not that the patient's hepatitis C was caused by events occurring after his military service such as his drug abuse. It is less likely than not that his hepatitis C is the result of the alleged events said to have occurred in the military."

R. at 94.

In July 2012, Mr. Strong submitted a statement in support of his claim. He asserted that the examiner incorrectly stated that he had smoked crack cocaine out of a glass pipe—"I never indicated this and I have never done it." R. at 84. Mr. Strong subsequently submitted another statement: "I have never used a glass pipe to smoke any type of substance. When I did smoke it was always in a cigarette type paper. To conclude that my condition is the result of using drugs through a glass pipe is totally erroneous." R. at 77. In August 2012, eight months after the initial examination, the VA examiner submitted an addendum stating, "the evidence used to determine that the veteran used a glass pipe to smoke crack cocaine was the veteran's own testimony given to this examiner during the course of the [examination]." R. at 74.

In August 2012, VA informed Mr. Strong that it was unable to obtain any morning reports about the suicide attempt.

In November 2012, the Board issued the decision on appeal finding that "[h]epatitis C was not shown to be present in service or until many years after service, and has not been shown by competent and credible evidence to be otherwise etiologically related to such military service, including any alleged risk factors." R. at 5. Therefore, the Board denied Mr. Strong's claim for entitlement to benefits for hepatitis C. This appeal followed.

II. ANALYSIS

At the outset, the Court notes that there is no disagreement as to whether Mr. Strong currently has hepatitis C; rather, the only issue is whether there is evidence linking his current disability to service.

On appeal, Mr. Strong argues that the Board failed to satisfy its duty to assist and to ensure substantial compliance with the Court's April 2011 and its own October 2011 remand orders. He also asserts that the Board failed to provide adequate reasons or bases for its decision to deny his claim for hepatitis C. The Court agrees on all counts.

"[A] remand by this Court or the Board confers on the . . . claimant, as a matter of law, the right to compliance with the remand orders." *Stegall v. West*, 11 Vet.App. 268, 271 (1998). When "the remand orders of the Board or this Court are not complied with, the Board itself errs in failing to [e]nsure compliance." *Id.* Such an error can constitute the basis for a remand by this Court. *Id.*

A. Unit Records

In the October 2011 Board remand, the regional office was instructed to "ask the Army National Guard, [the National Personnel Records Center,] or any other appropriate agency to provide [Mr. Strong]'s September 1977 *unit records and morning reports* to determine whether a suicide attempt of one of the servicem[e]n is documented." R. at 171 (emphasis added).

Here, the Board noted that the regional office attempted to verify Mr. Strong's claim that he cleaned up the blood of a member of his platoon and company that had attempted suicide. "In August 2012, a formal finding of unavailability was made by the [regional office] that no corroborative reports were located verifying the suicide attempt of a fellow serviceman. Morning reports of the unit were reviewed." R. at 7. The Board thus found that "the duty to assist has been fulfilled." *Id.*

Based on a review of the record, it is clear that the regional office attempted to obtain Mr. Strong's September 1977 morning reports but that they were not located. R. at 67 (Formal Finding of Unavailability); *see also* R. at 70 ("[M]orning reports were rarely created after 1974."). However, it is unclear from the record whether an attempt was made to obtain Mr. Strong's *unit records*, as required by the October 2011 Board remand. R. at 171. While the record contains multiple documents confirming that the requested morning reports were not found, the results of a search for unit records are simply not present. Further, contrary to the Secretary's assertions, the Court and Board remand orders did not require of VA a "fishing expedition." Secretary's Brief at 21 (citing *Gobber v. Derwinski*, 2 Vet.App. 470, 472 (1992)). Rather, the regional office was provided a very clear and distinct task—obtain Mr. Strong's September 1977 unit records. Accordingly, the Court concludes that the duty to assist has not been fulfilled and that the Board failed to ensure substantial compliance with the October 2011 Board remand. *See* 38 U.S.C. § 5103A; *see also Stegall*, 11 Vet.App. at 271.

B. Adequacy of January 2012 VA Examination

In the October 2011 Board remand, the regional office was also instructed to obtain a new VA examination to determine if it is more likely than not that Mr. Strong's hepatitis C is "related to his claimed in-service cold symptoms, sharing of razor blades and/or cleaning up blood after a failed suicide attempt by a fellow serviceman in September 1977 (or any other incident of his military service) versus post-military exposure to relevant risk factors, to include cocaine abuse." R. at 171. In January 2012, Mr. Strong underwent the requested examination.

Here, the Board found:

the January 2012 VA examination and the August 2012 addendum are more than adequate, as together they reflect a full review of all medical evidence of record, are supported by sufficient detail, and refer to specific documents and medical history as well as [Mr. Strong]'s service history to support the conclusions reached.

R. at 7.

First, with regard to Mr. Strong's contention that he contracted hepatitis C from sharing shaving razors while in service, the Board relied on the January 2012 examiner's notation that "there was no documentation within the medical record of [Mr. Strong] having shared razors and even had

this occurred, it would be considered an inefficient vector at best." R. at 12.¹ However, upon further review of the examination, the examiner explicitly acknowledged that "sharing personal items contaminated with infectious blood, such as razors" is a risk factor for hepatitis C. R. at 93. The examiner failed to provide a rationale for this contradictory conclusion and the Board did not acknowledge this in its decision. *See* 38 C.F.R. § 4.2 (2013) (stating that if an examination report does not contain sufficient detail, "it is incumbent upon the rating board to return the report as inadequate for evaluation purposes"); *see also Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008) (requiring VA medical examiners to provide a "reasoned medical explanation connecting" observations and conclusions); *Bowling v. Principi*, 15 Vet.App. 1, 12 (2001) (emphasizing the Board's duty to return inadequate examination report); *Ardison v. Brown*, 6 Vet.App. 405, 407 (1994) (holding that an inadequate medical examination frustrates judicial review).

Second, the Board found:

With regard to the other reported risk factor, [Mr. Strong] stated that he helped clean up blood products resulting from the attempted suicide of a fellow soldier. This involved using mops, towels, and bleach. . . . [The examiner] opined that from [Mr. Strong]'s description of the event (a mop, towels and bleach), it is unlikely that he had any significant exposure to blood products, given that hepatitis C is not spread through intact skin or mucous membranes.

R. at 12. The Court notes that it is unclear from the record whether Mr. Strong used gloves to clean up his fellow soldier's blood. R. at 88 (noting that Mr. Strong could not "remember whether he used gloves or not" while cleaning the blood); R. at 55 (noting that he did not use gloves in an instance where he had to clean up blood). Further, the examiner appears to assume, without providing any explanation, that all of Mr. Strong's skin was intact and that he did not have any cuts or wounds. Given some of Mr. Strong's statements, this may not have been the case.² *See* R. at 964 (stating that

¹ The Court notes that, on multiple occasions, the Board referenced that there was no documentation Mr. Strong shared razors while in service. R. at 10, 12. The Court addressed this in its April 2011 decision where it found the Board's statement that there is no documentation of shared razors in Mr. Strong's service treatment records to be "disingenuous." *Strong v. Shinseki*, 09-2499, 2011 WL 1557434 at 4 (Vet. App. Apr. 26, 2011). There, the Court noted that "there is simply no basis for the idea that such an occurrence would be memorialized in Mr. Strong's service medical records." *Id.* Even if the Board did not ultimately rely on this in reaching its conclusion, the Court once again finds these references to be disingenuous.

² The Court once again points out that, similar to the issue involving shared shaving razors, it is unlikely that such an occurrence as a cut on a hand would be documented by service medical records.

members of his unit frequently had cuts on their hands); R. at 1667 (testifying about an incident in service where he fell 30 feet from a pole. "Right away the drill [sergeant] ran over to me and snatched the wood out of my arm, a big chunk of wood. It started to bleed"). Neither the VA examiner nor the Board addressed this issue. *See Nieves-Rodriguez*, 22 Vet.App. at 301 (requiring VA medical examiners to provide a "reasoned medical explanation connecting" observations and conclusions).

Third, in a December 2004 statement, Mr. Strong asserted that "throughout my Reserve training, I recall that all members of my unit frequently cut their hands. I believe that I was exposed to their blood during the course of my training." R. at 964. This statement was also not addressed in the January 2012 VA examination or the November 2012 Board decision on appeal. Although medical examiners are not required to discuss all the evidence favorable to a claimant, the Board, in relying on an opinion that does not do so, is required to discuss any additional favorable evidence to comply with its duty to provide an adequate statement of reasons or bases for its decision. *See Gabrielson v. Brown*, 7 Vet.App. 36, 40 (1994). The October 2011 Board remand specifically directed the regional office to obtain a new VA examination to determine if it is more likely than not that Mr. Strong's hepatitis C is "related to his claimed in-service cold symptoms, sharing of razor blades and/or cleaning up blood after a failed suicide attempt by a fellow serviceman in September 1977 (or any other incident of his military service)." R. at 172 (emphasis added). Therefore, the Board failed to ensure substantial compliance with its October 2011 remand order. *See Stegall*, 11 Vet.App. at 271.

Fourth, the Board found that, although Mr. Strong denied drug abuse intravenously or intranasally, "he freely admitted to smoking crack cocaine, which the examiner noted involved use of glass pipes to inhale the smoke. The examiner explained that the glass pipes heat up causing superficial burns on the lip and that sharing pipes carries the risk of transmitting hepatitis C." R. at 12. The Board wholly ignores the fact that there is no evidence that Mr. Strong shared glass pipes with anyone else and instead relies on mere speculation on the part of the medical examiner. It is well recognized that speculative medical opinions are of little probative value and should not be relied upon by the Board. *See Hood v. Shinseki*, 23 Vet.App. 295, 298-99 (2009).

Fifth, the Board found that the "[s]ervice treatment records are entirely negative for any reference to symptoms associated with what is now known as hepatitis C." R. at 10. However, the Board also acknowledged that Mr. Strong had "a cough and other cold-symptoms" while in service. R. at 10; *see also* R. at 1839 (Service Treatment Record); R. at 1669 (noting that he was taken to a hospital off base "and they said it was something like the flu"). Considering that "[i]n the early or acute state, hepatitis mimics a variety of flu-like illnesses and may be difficult to diagnose," Secretary's Exhibit at 2, the Board failed to adequately explain its finding that there is no evidence of symptoms in service that may be associated with hepatitis C. *See* 38 U.S.C. § 7104(d)(1); *see also* *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990) (holding that the Board must provide an adequate statement of reasons or bases for its conclusions that permits the claimant to understand why the Board made the determination it did and to allow effective judicial review of that decision); *Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff'd per curiam*, 78 F.3d 604 (Fed. Cir. 1996) (table) (noting that the Board must analyze the credibility and probative value of the evidence, account for the evidence that it finds to be persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant).

Sixth, the Board found:

[Mr. Strong's] post-service medical records first document his hepatitis C in 2000, more than 2 decades after his separation from service. So[,], even accepting that hepatitis C may be dormant or have a latency before the associated symptoms become evident, the lapse of so many years in this particular instance after his separation from service and the first documented complaint of this claimed disorder is also probative evidence to be considered in determining whether his hepatitis C dates back to his military service. The Federal Circuit Court has held that such a lengthy lapse of time between the alleged events in service and the initial manifestation of relevant symptoms and/or diagnosis after service is a factor for consideration in deciding a service-connection claim. *Maxson v. Gober*, 230 F.3d 1330, 1333 (Fed. Cir. 2000).

R. at 14-15. As an initial matter, and as the Board correctly notes, "hepatitis C was not actually diagnosable until 1989, well after [Mr. Strong]'s period of service." R. at 9. Further, as the Board alludes to, the symptoms of hepatitis C can remain dormant for many years. *See* Secretary's Exhibit at 4, 14 (noting that it can take *over two decades* for symptoms or physical signs to appear). The Board cites to *Maxson* in support of its finding; however, this case is distinguishable. In *Maxson*, the

medical condition was an aggravated colon, not a disease like hepatitis C which, as noted above, can have a long period of dormancy. Additionally, the holding was specific to "evidence of whether a pre-existing condition was aggravated by military service," which is also not the case here as Mr. Strong is not seeking benefits based on a theory of aggravation. *Maxson*, 230 F.3d at 1332. Thus, for the Board to use the length of time between Mr. Strong's service and his diagnosis of hepatitis C as probative evidence is clearly erroneous, based on the Secretary's own exhibit. See 38 U.S.C. § 7261(a)(4).

In light of the above discussion, the Court concludes that the Board erred in finding the January 2012 VA examination adequate, failed to ensure substantial compliance with the Court's April 2011 and the Board's October 2011 remand orders, and provided inadequate reasons or bases for its decision to deny Mr. Strong benefits for hepatitis C. See 38 U.S.C. § 7104(d)(1); see also *Stegall*, 11 Vet.App. at 270-71 (remanding where a VA examination was "inadequate for evaluation purposes"); *Hicks v. Brown*, 8 Vet.App. 417, 422 (1995) (concluding that an inadequate medical evaluation frustrates judicial review); *Caluza*, 7 Vet.App. at 506; *Gilbert*, 1 Vet.App. at 57. Accordingly, the Court will vacate the November 2012 Board decision and remand the matter for further development and readjudication consistent with this decision.

On remand, the Board should provide Mr. Strong a new VA examination or opinion that addresses the various issues discussed in this decision and provides an etiology opinion that is supported by adequate explanation and rationale. Further, VA will, in compliance with its duty to assist under 38 U.S.C. § 5103A, attempt to obtain the *unit records* pertaining to the attempted suicide incident Mr. Strong identified.

Additionally, on remand, Mr. Strong is free to submit additional evidence and argument with respect to his claim for benefits for hepatitis C in accordance with *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order). See *Kay v. Principi*, 16 Vet.App. 529, 534 (2002). The Court reminds the Board that "[a] remand is meant to entail a critical examination of the justification for the decision." *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991). In addition, the Board shall proceed expeditiously, in accordance with 38 U.S.C. § 7112 (expedited treatment of remanded claims). The Board is also reminded that "when there is an approximate balance of

positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant." 38 U.S.C. § 5107(b).

III. CONCLUSION

Upon consideration for the foregoing, the November 19, 2012, Board decision is VACATED and the matter is REMANDED for further development and readjudication consistent with this decision.

DATED: May 20, 2014

Copies to:

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VA General Counsel (027)