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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 14-1067

JAMES E. BOND, APPELLANT,

V.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before KASOLD, *Chief Judge*.

MEMORANDUM DECISION

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

KASOLD, *Chief Judge*: Veteran James E. Bond appeals through counsel a February 18, 2014 decision of the Board of Veterans' Appeals (Board) that denied an earlier effective date for post-traumatic stress disorder (PTSD) and found, *inter alia*, that an August 2005 regional office (RO) decision denying benefits for PTSD provided notice to a reasonable claimant that the decision also implicitly denied benefits for anxiety. Mr. Bond argues that the Board clearly erred in (1) finding that the August 2005 RO decision implicitly denied benefits for anxiety, (2) finding that he was not credible in asserting that he did not understand that the August 2005 RO decision implicitly denied benefits for anxiety, and (3) failing to address whether the RO committed clear and unmistakable error (CUE) in not properly construing his March 2005 submission¹ as requesting service connection for anxiety in addition to PTSD. The Secretary disputes these arguments. Single-judge disposition is appropriate. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons discussed below, the Board decision on appeal will be affirmed.

Mr. Bond's arguments are focused on his belief that (1) he filed a claim for benefits for

¹ Mr. Bond signed the claim form on January 12, 2005, but the RO recognized the form as being submitted on March 11, 2005. Thus, the claim form will be referred to by the March 2005 date.

anxiety and a claim for benefits for PTSD, and (2) the August 2005 RO decision only denied his claim for benefits for PTSD and that decision did not reasonably provide notice that his claim for benefits for anxiety also was denied. Based on these beliefs, he argues that the Board clearly erred in finding that the August 2005 RO decision implicitly denied benefits for anxiety.

In making its finding, the Board considered four factors: (1) specificity and relatedness of the claims, (2) whether the adjudication alludes to the matter in a manner such that a person could reasonably infer that benefits were denied, (3) timing of the matters, and (4) whether the veteran was represented. *See Cogburn v. Shinseki*, 24 Vet.App. 205, 212-13 (2010) (noting these four factors for consideration when determining if claim had been implicitly denied). As to the first factor, the Board noted that Mr. Bond sought benefits for a generalized set of symptoms (anxiety) and a specifically diagnosed disorder (PTSD), and further noted that both are mental disorders that are commonly associated with each other, with PTSD recognized as an anxiety disorder. As to the second and third factors, the Board noted that Mr. Bond set forth his claim for benefits for anxiety and PTSD in a single, March 11, 2005, filing, and further noted that, although the August 2005 RO decision denied benefits for PTSD, it also specifically referred to his March 11, 2005, claim.

Based on the record of proceedings (ROP), the Board's findings are plausible and not clearly erroneous. *See Locklear v. Shinseki*, 24 Vet.App. 311, 318 (2011) (reviewing the Board's implicit-denial finding under the "clearly erroneous" standard); *see also Adams v. Shinseki*, 568 F.3d 956, 963 (Fed. Cir. 2009) (noting that the conditions for which the veteran sought VA benefits were closely related because rheumatic heart disease and bacterial endocarditis both affect heart valves and are frequently associated with each other); 38 C.F.R. § 4.130 (2013) (classifying PTSD (Diagnostic Code 9411) as an anxiety disorder when the Board made its decision).² Liberally construing these factors, they support the Board's finding that the August 2005 RO decision implicitly denied the totality of Mr. Bond's March 2005 claim for benefits because a person could reasonably infer the existence and scope of this denial from the RO decision. *See Locklear*, 24 Vet.App. at 315 (noting that whether a claim has been implicitly denied turns on whether a "reasonable person would understand from a decision that his request for benefits not explicitly

² PTSD was also classified as an anxiety disorder when the RO made its decision. *See* 38 C.F.R. § 4.130 (2005) (effective October 8, 1996, to April 23, 2009).

addressed in the decision nevertheless implicitly was adjudicated and decided by that decision").

With regard to the fourth factor, the Board noted that Mr. Bond was represented by an accredited service organization throughout the relevant period of his claim, and the representative agreed that Mr. Bond's intent was to seek benefits for his PTSD, which caused him anxiety and related issues. Although Mr. Bond gives great weight in his argument to the fact that he was represented below by an accredited service organization and not an attorney, this is only one factor for consideration. Moreover, there is no requirement that representation by an accredited service organization be considered, *per se*, inadequate; rather, whether a claimant is represented by counsel or an accredited service organization goes to the degree to which the claim might be liberally read. *Cogburn*, 24 Vet.App. at 217.

Here, as noted above, a liberal reading of the first three factors addressed by the Board supports its finding that the August 2005 RO decision denied the full scope of Mr. Bond's March 2005 claim, and that a person could reasonably infer the scope of this denial from the RO decision. Notably, the record also reflects that the letter forwarding the August 2005 RO decision to Mr. Bond states that the RO made a decision on Mr. Bond's "claim for service connected compensation received on March 11, 2005." Record (R.) at 806. Otherwise stated, Mr. Bond fails to demonstrate that the Board clearly erred weighing the four factors and ultimately finding that a reasonable person would understand that the August 2005 RO decision denied the March 11, 2005, claim for benefits. *Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (appellant bears burden of demonstrating error on appeal), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table). Moreover, read as a whole, as the Board's statement should be read, *Janssen v. Principi*, 15 Vet.App. 370, 379 (2001) (rendering a decision on the Board's statement of reasons or bases "as a whole"), the Board's statement is understandable and facilitative of judicial review, *see Allday v. Brown*, 7 Vet.App. 517, 527 (1995) (holding that the Board's statement "must be adequate to enable a claimant to understand the precise basis for the Board's decision, as well as to facilitate review in this Court").

Mr. Bond's second argument – which focuses on the Board's assessment of his 2013 affidavit concerning his belief that the August 2005 RO decision did not deny benefits for anxiety – is inapposite. The implicit-denial analysis examines whether a reasonable person would be put on notice that their claim was denied, not whether the particular claimant believed the claim was denied.

See Cogburn, 24 Vet.App. at 212 (focusing on whether the matter's denial could be reasonably inferred); *see also Adams*, 568 F.3d at 963 (evaluating whether a matter was implicitly denied by asking whether "a reasonable veteran would have known that his claim for disability compensation for a [matter] was denied").

In support of his third argument, Mr. Bond asserts that the Board failed to address his contention that the RO committed CUE in not properly construing his March 2005 submission as requesting service connection for anxiety in addition to PTSD. Although the Board did not address that assertion of CUE, Mr. Bond fails to demonstrate that his CUE claim was properly before the Board, *see Jarrell v. Nicholson*, 20 Vet.App. 326, 334 (2006) (en banc) (explaining that an assertion of CUE in a RO decision must be presented to and decided by the RO before the Board has jurisdiction over the claim), and he therefore fails to demonstrate prejudice from any failure of the Board to address the CUE claim, *see Shinseki v. Sanders*, 556 U.S. 396, 410 (2009) (appellant bears burden of demonstrating prejudice on appeal).

Upon consideration of the foregoing, the February 18, 2014, Board decision that denied Mr. Bond's claim for an earlier effective date is AFFIRMED.

DATED: March 31, 2015

Copies to:

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