



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

Represented by
Gordon A. Graham, Agent

Docket No. 220204-218270
Advanced on the Docket

DATE: March 1, 2023

REMANDED

Entitlement to an evaluation greater than 10 percent disabling for instability of the left knee prior to January 30, 2020 is remanded.

Entitlement to earlier effective date for special monthly compensation at the housebound rate is remanded.

REASONS FOR REMAND

The Veteran served on active duty from October 1989 to March 1996.

The matters come to the Board of Veterans' Appeals (Board) on appeal from a January 2022 rating decision issued by a Department of Veterans Affairs (VA) Regional Office (RO). In the February 2022 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) (NOD), the Veteran elected the Direct Review option; therefore, the Board may only consider the evidence of record at the time of the AOJ decision on appeal. 38 C.F.R. § 20.301.

In a June 2022 decision, the Board denied entitlement to an evaluation greater than 10 percent disabling for instability of the left knee prior to January 30, 2020 and denied entitlement to an earlier effective date for special monthly compensation at the housebound rate. The Veteran appealed the denial of benefits to the United States Court of Appeals for Veterans Claims (Court). In a January 2023 Order, the Court granted a Joint Motion for Partial Remand (JMPR) and vacated and

remanded that part of the Board's decision that denied entitlement to an evaluation greater than 10 percent disabling for instability of the left knee prior to January 30, 2020 and denied entitlement to an earlier effective date for special monthly compensation at the housebound rate.

In February 2023, the Veteran waived any remaining time to submit additional argument.

This case has been advanced on the docket pursuant to 38 C.F.R. § 20.902(c).

1. Entitlement to an evaluation greater than 10 percent disabling for instability of the left knee prior to January 30, 2020 is remanded.

The Board is not able to make a fully informed decision on the issue of entitlement to an evaluation greater than 10 percent disabling for left knee instability prior to January 30, 2020. The Board finds that there is conflicting medical evidence regarding the Veteran's left knee condition that is material to determining which Diagnostic Codes are applicable and remand is warranted.

The Veteran submitted an addendum private medical opinion in March 2021. The examiner opined that the condition of the Veteran's left knee that warranted a rating of 20 percent on January 30, 2020 was at least as likely as not present on November 20, 2003. A January 2020 VA examiner noted left knee conditions of recurrent patellar dislocation since 1999, osteoarthritis since 2020, and meniscal tear of unknown date.

During the January 2020 examination, the Veteran reported that he stopped seeking medical care for his left knee and his last evaluation was in the 2008 timeframe. In finding the existence of a left knee meniscal tear, however, the January 2020 examiner cited to findings printed on December 3, 2012, which suggests that left knee meniscal tear existed as early as 2012. The findings were nonsequential copies of VA treatment records and service treatment records submitted by the Veteran on December 8, 2014. The findings include an imaging report that seemingly pertains to the left knee; however, VA treatment records added to the claims file indicate that these findings relate to August 2012 magnetic resonance

imaging (MRI) of the right knee. October 8, 2015, CAPRI. Further, numerous VA treatment records, including August 2012 and June 2014 orthopedic surgery consults, note that the Veteran suffered an anterior cruciate ligament (ACL) injury of the right knee in 2011. *See* September 6, 2013, CAPRI.

The Board finds that remand is warranted to clarify the Veteran's left knee conditions. The private medical opinion and the January 2020 examination suggest that a left knee meniscal tear existed prior to January 2020. VA treatment records suggest that the Veteran has a right knee meniscal tear. The RO's failure to obtain a medical opinion to clarify conflicting medical evidence material to the Veteran's claim constitutes a pre-decisional duty to assist error and remand is warranted.

2. Entitlement to earlier effective date for special monthly compensation at the housebound rate is remanded.

Remand is warranted for the claim of entitlement to an earlier effective date for special monthly compensation at the housebound rate as this claim is "inextricably intertwined" with the claim of entitlement to an evaluation greater than 10 percent disabling for left knee instability prior to January 30, 2020. *See Harris v. Derwinski*, 1 Vet. App. 180, 183 (1991) (two issues are "inextricably intertwined" when the adjudication of one issue could have "significant impact" on the other issue).

The matters are REMANDED for the following action:

1. Obtain a medical opinion from the appropriate clinician regarding the nature of the Veteran's left knee condition. The need for an in-person examination is left to the discretion of the examiner. The examiner should review the claims file and address the following:

- (a.) The examiner should offer an opinion as to the onset of the Veteran's left knee meniscal tear as diagnosed by the January 2020 examiner. If the examiner determines that the Veteran does not

have a left knee meniscal tear, the examiner should identify all left knee conditions or diagnoses present since November 20, 2003.



K. Parakkal
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

M. B. Jackson, Associate Counsel

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.