

IN THE APPEAL OF
GEORGE P. OJALA



BOARD OF VETERANS APPEALS
WASHINGTON, D.C. 20420

FINDINGS AND DECISION

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DOCKET NO. 85-28 929

DATE DEC 17 1985

THE ISSUE

Entitlement to an effective date earlier than August 28, 1984, for assignment of a total rating.

• REPRESENTATION

Appellant represented by: Swords to Plowshares, Veterans Rights Organization, Inc.

WITNESSES AT HEARING ON APPEAL

Veteran and R. Beale

CONSULTATIONS BY THE BOARD

G. Wm. Thompson, Staff Legal Adviser

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ACTIONS LEADING TO PRESENT APPELLATE STATUS

Based upon results of a Veterans Administration examination in November 1978, by rating action in January 1979, a schedular 70 percent evaluation for the veteran's service-connected schizophrenic reaction was reduced to 50 percent, and individual unemployability was also terminated. The veteran appealed from that determination, and in the course of the appeal he was hospitalized on various occasions, with treatment of psychiatric symptoms. A different section of the Board of Veterans Appeals, in September 1982, established entitlement to a temporary total rating for the veteran for the periods of hospitalization, and denied entitlement to an evaluation in excess of 50 percent for the veteran's service-connected schizophrenia. The veteran reopened his claim in 1982 and by rating action in December 1984 the 50 percent disability evaluation was increased to 100 percent, effective August 28, 1984. The veteran has disagreed with the effective date.

CONTENTIONS

It is contended by and on behalf of the veteran, in substance, that an earlier effective date is in order for the total rating. The veteran asserts that his benefits should be retroactive back to April 1, 1978, the date that the Veterans Administration first took his benefits away. The veteran believes that he was cut to 50 percent due to the fact that the Veterans Administration did not recognize latent schizophrenia as a service-connected disability. The veteran asserts that since that time he has filed numerous appeals, been in and out of hospitals and has consistently filed a notice of disagreement with each denial. The veteran believes that he has been 100 percent since before 1977, that he has consistently had symptoms of posttraumatic stress disorder and that the previous diagnoses were inaccurate and wrong. The veteran demands retroactive benefits back to the date his benefits were reduced, over seven years ago.

THE EVIDENCE

The veteran had active military service from August 1969 to August 1973.

The veteran underwent psychiatric examination by the Veterans Administration in November 1978. At that time he complained of headaches, echoes of screaming in his head and difficulty concentrating. He also had multiple physical complaints. The veteran reported living with a friend, avoiding crowds and being unable to work. On mental status examination he was alert, well oriented and cooperative. He was not particularly anxious. His complaints were largely physical. Apparently he continued to experience auditory hallucinations and some referential ideas. The diagnosis was chronic undifferentiated schizophrenic reaction.

The Board of Veterans Appeals, in September 1982, in addition to other determinations, denied entitlement to an increased rating for schizophrenic reaction, latent type, evaluated as 50 percent disabling. The pertinent evidence before the Board at that time included: Diaries of the veteran's feelings and thoughts in 1979 and 1980; a report of hospital treatment in 1979 which included a diagnosis of borderline personality disorder with anxiety and depression and Briquet's syndrome; Veterans Administration mental health clinic records in 1979; reports of Veterans Administration hospitalization for the veteran from November 1979 to May 1980 with diagnosis of neurasthenic neurosis, immature personality, and schizophrenia, paranoid type by history, in good remission; a report from a private psychiatrist dated in March 1981 to the effect that the veteran was treated for depression, paranoia and hallucinations both auditory and visual, generalized dysphoria and extreme social isolation associated with his combat service in Vietnam with a diagnosis of delayed stress syndrome; a report of Veterans Administration hospitalization in 1981 which showed a diagnosis of adjustive reaction with anxiety and depression, chronic drug abuse and headaches; a special Veterans Administration psychiatric examination in October 1981 with a diagnosis of chronic undifferentiated-type schizophrenic reactions. On the basis of such evidence the Board made the following pertinent finding of fact:

"The veteran's schizophrenic reaction, latent type, is primarily manifested by symptomatology in good remission with no more than considerable impairment of social and industrial adaptability."

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Based on this finding of fact, the Board made the following pertinent conclusion of law:

"A rating in excess of the 50 percent currently assigned for schizophrenic reaction, latent type, is not warranted. (38 U.S.C. 355; 38 C.F.R. Part 4, Code 9205)"

A letter from United States Senator Henry M. Jackson, concerning the veteran, served to reopen the veteran's claim for increased disability benefits. The letter was received October 15, 1982.

Associated with the letter from Senator Jackson was a letter from the veteran in which he set forth his various difficulties and problems. Apparently also received at that time was what appeared to be a diary kept by the veteran, of headaches, during September 1982.

In April 1982 the veteran was seen at a Veterans Administration pain clinic because of headaches. It was recorded that the veteran had a past history of drug abuse before his experience in Vietnam, mostly involving LSD. The veteran reported that he had had "delayed stress syndrome" and also stated that he had "sleep disturbance, neurasthenic neurosis, paranoid schizophrenia" all of which he blamed on his experience in Vietnam. It was noted that various psychotropic and antidepressant medications had been tried, to no avail. It was reported that the veteran was admitted to a Veterans Administration medical facility in September 1981, for 58 days, where he was felt to have no evidence of delayed stress and he was taken off psychotropic medications altogether. It was felt that the veteran's major underlying problem was psychosocial in nature and that treatment should consist of outpatient psychotherapy as well as participation in a Vietnam veterans outreach program.

The veteran was interviewed by a Veterans Administration psychologist in May 1982. At that time the veteran reiterated his anger at a lack of understanding concerning his situation and diagnosis and reportedly was unable to find relief from both physical and psychological pain. It was reported that the veteran felt that by receiving increased compensation money there would be relief from some of the

pressure he felt and improve his status. The veteran also felt that he had endured great pain, hardship, trauma and damage in Vietnam and that he was entitled to compensation. It was noted that the veteran had decided to decrease the pressure he felt by removing himself to an isolated place and avoiding contact with other people. He also intended to sue the Veterans Administration and initiate a Congressional inquiry to draw attention to and rectify his mistreatment. The veteran desired to tell the psychologist about his anger and disgust and that the Veterans Administration had not been able to successfully treat him to his satisfaction. He wanted his thoughts and feelings recorded in his records. It was noted that the veteran would continue to see a private psychiatrist on fee basis.

Received in support of the veteran's claim in February 1983 was a copy of a letter from the veteran's mother to Senator Jackson, and a statement from a private physician. In the letter the veteran's mother reported that the veteran had had no problems prior to service but after returning from Vietnam he had had considerable problems.

E. Kailin, M.D., in a statement dated in February 1982 reported that the veteran had had unremitting headaches since 1972. She noted that the veteran claimed to use "grass" only about once in about two months and that the veteran did not seem drunk except the day of his initial visit. Dr. Kailin noted that the veteran had seen a Dr. Peterson, a psychiatrist, and the diagnosis was "stress syndrome."

The Reverend R. Beal, in a statement dated in May 1983, reported that the veteran had been a client, close friend and companion for the past nine months and during all of that time he suffered from chronic and severe physical pain in his lower back, severe migraine headaches and extreme stress and tension in dealing with everyday living problems as a result of his delayed stress from having served in Vietnam. She also reported that the veteran had had improper and inept treatments while in the care of the Veterans Administration. She felt that the veteran was entitled to a 100 percent disability rating such as he had been given by the Social Security Administration. She indicated that the amount of disability the veteran was receiving was hardly enough to live on let alone seek and pay for "Proper Treatment" of his condition.

E. Kailin, M.D., in a statement dated in May 1983, reported seeing the veteran on various occasions in 1981 and 1982. Her diagnosis for the veteran was severe migraine headaches. She reported that in the course of treating the veteran she at no time felt that the veteran had any evidence of schizophrenia. She indicated that she had seen him initially, badly affected by medications and alcohol, but he had given these up for the most part and had greatly improved. She reported that stress definitely played a part in triggering his headaches, which were disabling in severity.

Also received in May 1983 were copies of records of treatment for the veteran on various occasions from 1976 to 1981. The material, for the most part, was a duplicate of evidence already in file.

The veteran underwent private psychiatric evaluation on August 28, 1984. A background on the veteran was given. It was reported that because of the veteran's intolerance of the presence of other people he became more and more reclusive and resorted to wilderness camping in order to escape human company. On mental status examination the veteran was oriented and alert with no evidence of intoxication. He spoke in a low monotone. Form of thought was loose with many tangential thought sequences. He denied hallucinatory and delusional perceptions but did have "flashbacks" to Vietnam scenes. There were significant violent fantasies of retaliation against people in general but none were directed against specific individuals. Content of thought was thoroughly dominated by a perception of self as suffering, sick, incapacitated and not receiving the kind and amount of help required. There was also a strong feeling of "alienation" in that the veteran felt different from others and unable to fit in anywhere. His affect was depressed and fearful of the future. His depression and preoccupation with his emotional turmoil interfered with his full use of his capabilities. Concentration and attention span were diminished. His memory was likewise impaired both for remote and recent material. No abnormal motor phenomenon or other gross evidence of neurological illness was observed.

The examining physician indicated that there did not seem to be much question that the veteran suffered from a disabling illness. Diagnostically, the issues were said to be less clear. The medical records reflected a long list of different diagnoses. The doctor made certain observations in regard to the veteran's response to various antipsychotic medications which were quite atypical for schizophrenia. He also reported

that the abnormal perceptions the veteran had, on occasion, reported in the past were also not characteristic for schizophrenia. The doctor felt that all of the above observations were consistent with a diagnosis of post-traumatic stress disorder. There was no evidence of psychopathy prior to combat. There was unquestionable exposure to traumatic events outside of the range of usual human experience. There was a typical latent period immediately after combat during which no symptoms were evident. There were recurrent painful and intrusive recollections of combat scenes. Estrangement from others, following the veteran's return from Vietnam was much in evidence and impaired concentration remained a problem. Irritability and violent fantasies were also clearly present. The diagnosis was posttraumatic stress disorder, chronic. The examining physician felt that the veteran was totally disabled as far as gainful employment was concerned.

The veteran testified at a hearing before the originating agency in September 1984. At that time the veteran detailed the problems he had being around people and sleeping. He made reference to his experiences in Vietnam and the problems that he has suffered since that time. Supportive testimony was offered by R. Beale. She gave instances of the veteran's disinterest in things around him, and his inability to handle stress. A complete copy of the hearing transcript is in the veteran's file.

The veteran underwent psychiatric evaluation by the Veterans Administration in October 1984. At that time a brief background on the veteran was given. The veteran complained of intrusive thoughts about Vietnam occurring on a daily basis, flashbacks precipitated by the drone of a helicopter, noise of trucks or the sound of Vietnamese people and nightmares associated with his wartime experiences. It was noted that the veteran was markedly suspicious of people and maintained a marked level of vigilance. It was noted that the veteran had not had any employment since service.

On mental status examination it was reported that the veteran requested that the interview be taped for his attorney. The veteran's affect was constricted during the interview, apart from the time he described a wartime experience, at which time he showed a great deal of sweating and anxiety. He had nightmares of a persistent nature occurring a couple

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of times a month, with a marked sense of vigilance about him. He experienced flashbacks which were very disturbing for him and indicated that he was quite disoriented as a result. Intrusive thoughts about Vietnam were quite common and anxiety-provoking for him. His thoughts were organized, coherent and relevant. There were no delusions or hallucinations. There were no psychotic features. His judgment and reasoning were adequate. It was noted the veteran felt depressed and had a passive death wish but no active suicidal thoughts. The diagnosis was posttraumatic stress disorder secondary to extreme anxiety-provoking situations of combat in Vietnam.

By rating action in December 1984 a total rating for chronic posttraumatic stress disorder (previous diagnosed schizophrenic reaction) was assigned from August 28, 1984.

THE LAW AND REGULATIONS

Except as otherwise provided, the effective date of an evaluation and award of compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. (38 C.F.R. 3.400(b))

The effective date for the award of disability compensation shall be the earliest date as of which it is factually ascertainable that an increase in disability had occurred if claim is received within 1 year from such date, otherwise, date of receipt of claim. (38 C.F.R. 3.400(o)(2))

Regardless of Veterans Administration regulations concerning effective dates of awards, and except as otherwise provided, payment of monetary benefits based on original, reopened, or increased awards of compensation may not be made for any period prior to the first day of the calendar month following the month in which the award became effective. For the purpose of this paragraph the term "increased award" means an award which is increased because of an added dependent, increase in disability or disability rating, or reduction in income. (38 C.F.R. 3.31(a))

A 70 percent rating is provided for posttraumatic stress neurosis when the ability to establish and maintain effective or favorable relationships with people is seriously impaired and there are psychoneurotic symptoms of such severity and persistence that there is pronounced impairment in the ability to obtain or retain employment. A 100 percent rating is authorized when the attitudes of all contacts except the most intimate are so adversely affected as to result in virtual isolation in the community and there are totally incapacitating psychoneurotic symptoms bordering on gross repudiation of reality with disturbed thought or behavioral processes associated with almost all daily activities such as fantasy, confusion, panic and explosions of aggressive energy resulting in profound retreat from mature behavior such that the veteran is demonstrably unable to obtain or retain employment. (38 C.F.R. Part 4, Code 9411)

When a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. A reasonable doubt means a substantial doubt and one within the range of probability as distinguished from speculation or remote possibility. (38 C.F.R. 3.102)

DISCUSSION AND EVALUATION

The veteran believes that he is entitled to a total rating for his service-connected psychiatric disability back to 1979, when his total rating based on unemployability due to service-connected disability was terminated, and the rating for his service-connected disorder was reduced from 70 percent to 50 percent. The Veterans Administration examination in November 1978 certainly does not support an evaluation in excess of 50 percent. The Board points out that a Board of Veterans Appeals decision in September 1982, on the evidence then of record, denied entitlement to an increased evaluation for his service-connected disorder. This decision is final in the absence of obvious error. There have been no specific allegations of error of law or fact in regard to the September 1982 decision. The Board has carefully reviewed all of the evidence in connection with the previous Board decision and finds that the medical and legal conclusions entered in connection therewith were adequately supported by the evidence then of record.

The veteran's claim for increased disability benefits was reopened in mid-October 1982. Material received in support of the reopened claim in 1982 and 1983 was not supportive of an increased evaluation or total rating. While there was reference to the veteran's having a stress syndrome in February 1982, the symptomatology, as reported, did not support a total rating. The symptomatology as reported and referenced in the August 28, 1984 psychiatric evaluation of the veteran was the first clinical documentation, in regard to the veteran's reopened claim, of increased disability. The private examination of August 1984 was also supported by Veterans Administration examination in October. In the Board's opinion the August examination is the first date that the severity of the veteran's psychiatric condition was clinically documented and described to the extent necessary for the assignment of a total rating.

It has been reported that the veteran is in receipt of Social Security benefits, based on disability. In this regard, it is the responsibility of the Veterans Administration to make an independent determination as to the degree of disability present and its effect on employability under the laws and regulations by which it is covered.

The Board has, of course, considered the doctrine of reasonable doubt but does not find the evidence so evenly balanced or otherwise of such a nature so as to warrant allowance of this appeal.

FINDINGS OF FACT

1. The Board of Veterans Appeals, in September 1982, denied entitlement to an increased evaluation for the veteran's service-connected psychiatric disorder, evaluated as 50 percent disabling.
2. The veteran's claim for increased disability benefits was reopened on October 15, 1982.
3. The veteran underwent private psychiatric examination August 28, 1984, and at that time the veteran was found to have tangential thought sequences, flashbacks, alienation, depressed affect, diminished concentration and attention span, impairment of remote and recent memory, intolerance

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for other human beings and the diagnosis was posttraumatic stress disorder, chronic.

4. The Veterans Administration examination in October 1984 was supportive of the August examination, and the diagnosis was posttraumatic stress disorder secondary to extreme anxiety-provoking situations of combat in Vietnam.

5. ~~Prior to August 28, 1984, the evidence of record did not establish that the veteran's service-connected psychiatric disorder, in itself, resulted in complete industrial or social inadaptability.~~

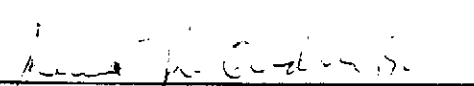
CONCLUSION OF LAW

An award of 100 percent schedular evaluation for chronic posttraumatic stress disorder, prior to August 28, 1984, is not warranted. (38 U.S.C. 4004; 38 C.F.R. 3.102, 3.400, 19.194)


DECISION

Entitlement to an effective date earlier than August 28, 1984, for assignment of a total rating for chronic posttraumatic stress syndrome has not been established.

This appeal is denied.


KENNETH R. ANDREWS, JR.


PAUL M. SELFON, M.D.


PHILIP E. WRIGHT