Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 24-8336

MARK D. MORRISON, APPELLANT,

V.

DOUGLAS A. COLLINS,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before JAQUITH, *Judge*.

MEMORANDUM DECISION

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

JAQUITH, *Judge*: Self-represented U.S. Army veteran Mark D. Morrison appeals a September 11, 2024, Board of Veterans' Appeals (Board) decision that determined that the rating for his service-connected left knee degenerative arthritis had been properly reduced from 20% to 10% and thereby denied restoration of the 20% rating. Record (R.) at 5-14. For the reasons that follow, the Court reverses the Board's decision and remands the matter for reinstatement of the 20% rating for left knee degenerative arthritis as of November 3, 2021, the effective date of the reduction. *See* R. at 178.

I. BACKGROUND

The veteran honorably served on active duty from May 19, 2015, to August 22, 2018. R. at 881. In October 2018, he attended a VA exam with a physician who completed a disability benefits questionnaire (DBQ) for knee and lower leg conditions. R. at 931-47. The veteran was diagnosed with a "[l]eft [anterior cruciate ligament (ACL)] tear with reconstruction and residual scar" after he "injured his left knee while on active duty." R. at 933. The veteran reported experiencing flare-ups and functional impairment such that he "cannot walk or stand for prolonged periods." R. at 934. Range-of-motion (ROM) testing for the left knee showed full flexion and

extension[1] with no additional limitations after three repetitions. R. at 935-36. However, the physician opined that pain, fatigue, and weakness would "significantly limit [the veteran's] functional ability with flare[-]ups," restricting left knee flexion to 130 degrees. R. at 938. The DBQ showed that muscle strength testing and joint stability testing of the left knee were both normal. R. at 939-42. In terms of occupational impact, the physician concluded that the veteran would be unable to do "jobs involving prolonged walking or standing." R. at 946.

In April 2021, the veteran presented to a VA follow-up appointment with complaints of "chronic" left knee pain. R. at 375-76. A physical examination revealed "[f]ull [ROM] of all extremities." R. at 377. The results of an x-ray showed "[p]ostsurgical changes of [a] previous [ACL] repair" but "[n]o acute plain radiographic abnormality." R. at 371-72. Later that month, the veteran was examined by a VA nurse practitioner, who diagnosed him with a left knee meniscal tear. R. at 461. The veteran reported experiencing "moderate" flare-ups of the left knee "once every 3 days" that "c[ould] last for a day or two" and were "precipitated by stairs, [going] up or down hill, [walking on] uneven ground, and car[ry]ing heavy things." R. at 463. Testing revealed left knee flexion to 110 degrees, R. at 465, which the nurse practitioner estimated would decrease to 55 degrees with repeated use over time, R. at 466, and 30 degrees with flare-ups, R. at 467. The DBQ indicated that the veteran had a "[c]omplete ligament tear" of the left knee that was successfully repaired, although he required a prescription for braces, R. at 468, which he occasionally used "for stability," R. at 470.

In May 2021, a VA regional office (RO) increased the rating assigned for his service-connected left knee disability from 10% to 20% as of January 11, 2021,[2] under Diagnostic Code (DC) 5260[3] based on evidence showing "[l]imitation of flexion of 16 to 30 degrees." R. at 435-46. As of January 11, 2021, the veteran's combined disability rating was 70%. R. at 449.

In June 2021, the veteran received the results of a magnetic resonance angiography stating that there was "no evidence of new ligament damage to the left knee," although "[i]t does show chond[ro]sis which is cartilage change from prior trauma or over use." R. at 366-67.

---

[1] Normal ROM for the knee is flexion to 140 degrees and extension to 0 degrees. *See* 38 C.F.R. § 4.71 pl.II (2025).

[2] The rating decision stated that January 11, 2021, was "the day VA received [the veteran's] intent to file (ITF) a claim for compensation," R. at 435, although this document was not included in the record of proceedings before the Court.

[3] DC 5260 provides for the assignment of varying ratings based on the degree of limitation of flexion of the leg: a 0% rating for flexion limited to 60 degrees, a 10% rating for flexion limited to 45 degrees, a 20% rating for flexion limited to 30 degrees, and a 30% rating for flexion limited to 15 degrees. 38 C.F.R. § 4.71a, DC 5260 (2025).

On November 3, 2021, the veteran submitted a claim for an increased rating for his left knee disability. R. at 392-98. During a December 1, 2021, VA exam, he reported ongoing left knee pain, swelling twice a month, and "feel[ing] like his knee is unstable and gives out," as a result of which "[h]e cannot climb ladders well," "has trouble walking on stairs," and "is able to run but not far." R. at 280. The DBQ indicated that the veteran did not report flare-ups, R. at 281, or have a history of "instability or recurrent subluxation" or "frequent effusion" of the knee, R. at 282 (capitalization altered). He exhibited active flexion to 130 degrees and passive flexion to 140 degrees, with pain during both movements. R. at 284. The examining nurse practitioner opined that the procured evidence did not suggest that the veteran's functional ability would be further limited with repeated use over time. R. at 287. In the section addressing joint stability, the nurse practitioner noted that there was "recurrent subluxation or persistent instability" of the left knee and that the veteran had had an "[i]ncomplete/partial ligament tear," which required a prescribed brace for ambulation. R. at 292. Regarding functional impact, the DBQ stated that the veteran "develops pain in [the] knee and has to miss work occasionally, especially if he has a longer day the day before," that "[h]e has to rest often due to knee pain," and that "his knee swells at times so he needs to rest or leave work early." R. at 298.

In January 2022, the RO issued a December 2021 rating decision that reduced the rating for the veteran's left knee disability from 20% to 10% as of November 3, 2021. R. at 166-84, 191-93. This decision also assigned a separate 10% rating as of November 3, 2021, for left knee instability under DC 5257,[4] so the veteran's combined disability rating remained at 70%. *Id.*[5] The veteran filed a timely Notice of Disagreement as to the evaluation of his left knee disability that was "decreased from 20 percent to 10 percent," and he elected the Board's direct review docket. R. at 162. In an accompanying statement, the veteran described his experience at the VA

[4] DC 5257 for "other impairment" of the knee sets forth ratings for "[r]ecurrent subluxation or instability," assigning a 10% rating for "[s]prain, incomplete ligament tear, or complete ligament tear (repaired, unrepaired, or failed repair) causing persistent instability, without a prescription from a medical provider for an assistive device (e.g., cane(s), crutch(es), walker) or bracing for ambulation," a 20% rating for either "[s]prain, incomplete ligament tear, or repaired complete ligament tear causing persistent instability, and a medical provider prescribes a brace and/or assistive device (e.g., cane(s), crutch(es), walker) for ambulation)" or "[u]nrepaired or failed repair of complete ligament tear causing persistent instability, and a medical provider prescribes either an assistive device (e.g., cane(s), crutch(es), walker) or bracing for ambulation," and a 30% rating for "[u]nrepaired or failed repair of complete ligament tear causing persistent instability, and a medical provider prescribes both an assistive device (e.g., cane(s), crutch(es), walker) and bracing for ambulation." 38 C.F.R. § 4.71a, DC 5257 (2025).

[5] "*Id.*" means "[t]he same" and "is used in a legal citation to refer to the authority cited immediately before." BLACK'S LAW DICTIONARY 893 (11th ed. 2019).

examination where the nurse practitioner[6] measured the ROM of his knee by asking him to "bend [his] knee as far as possible." R. at 165. Although the veteran complied, the nurse practitioner "grabbed [his] leg and knee and continued to further bend [it] to get a better measurement[,] causing [him] great pain." *Id*. The veteran reported that "[a]fter [he] left the appointment, [his] knee actually swelled up," and he wondered "if [he] got a decreased percentage because the [nurse practitioner] painfully bent [his] knee to get better measur[e]ments." *Id*.

In the September 11, 2024, decision on appeal, the Board found that the reduction of the rating for the veteran's left knee disability was proper. R. at 5-14. The Board stated that the procedural requirements of 38 C.F.R. § 3.105(e) did not apply because the reduction of the rating for his knee claim did not cause his combined disability rating to decrease. R. at 9-10. In addition, the Board noted that because the 20% rating had been in effect for less than 5 years, "the provisions of 38 C.F.R. § 3.344(c) apply and the threshold question is whether adequate evidence showed that his left knee degenerative arthritis underwent actual improvement, to include improvement in the [v]eteran's ability to function under the ordinary conditions of life and work." R. at 10. After reviewing the results of the December 2021 VA exam, the Board determined that "the evidence at the time of the rating decision on appeal established that the rating reduction was proper." R. at 11-12. As the Board explained, the December 2021 VA examination revealed left knee flexion to 130 degrees and extension within normal limits, did not diagnose the veteran with a tibial or fibular impairment, and showed that his meniscal tear did not result in dislocated cartilage or frequent episodes of "locking," pain, and effusion. R. at 13. Thus, the Board determined that "even considering the [v]eteran's lay reports of symptoms and noted functional loss, the degree of additional limitation reflected would not result in symptoms more nearly approximating a 20 percent rating under DCs 5256 through 5262." *Id*.

II. ANALYSIS

The veteran argues that the reduction was improper based on his "level and amount of injury, pain[,] and suffering," which has affected his ability to maintain employment. Appellant's Informal Brief (Br.) at 2. By contrast, the Secretary urges the Court to affirm the Board's decision because "[the veteran] has not carried his burden of demonstrating error," as his arguments

[6] Although the veteran referred to the examiner as a doctor, R. at 165, the DBQ form shows that he was a nurse practitioner, R. at 305.

"amount, at best, to mere disagreement with the Board's assessment and weighing of the evidence." Secretary's Br. at 3. As explained below, the Court concludes that reversal is the appropriate remedy because the Board erroneously placed the burden of proof on the veteran and failed to address whether the perceived improvement in his disability reflected an *actual* improvement in his ability to function under the ordinary conditions of life and work.

The veteran is representing himself and is entitled to a liberal construction of his arguments. *See De Perez v. Derwinski*, 2 Vet.App. 85, 86 (1992); *Calma v. Brown*, 9 Vet.App. 11, 15 (1996). In cases where a disability rating is reduced, the Board must determine whether the reduction was proper. *See Dofflemyer v. Derwinski*, 2 Vet.App. 277, 279-80 (1992). The Board is required to comply with several general VA regulations applicable to all rating-reduction cases, regardless of the rating level or the length of time that the rating has been in effect; these regulations include 38 C.F.R. §§ 4.1, 4.2, and 4.10. *See Brown v. Brown*, 5 Vet.App. 413, 420-21 (1992).

Pursuant to 38 C.F.R. §§ 4.1 and 4.2, VA is "required in any rating-reduction case to ascertain, based upon review of the entire recorded history of the condition, whether the evidence reflects an actual change in the disability and whether the examination reports reflecting such change are based upon thorough examinations." *Id*. at 421. Additionally, under 38 C.F.R. § 4.10, VA must not only "determine[] that an improvement in a disability has actually occurred but also that that improvement actually reflects an improvement in the veteran's ability to function under the ordinary conditions of life and work." *Id*.; *see also* 38 C.F.R. § 4.10 (2025) ("The basis of disability evaluations is the ability of the body as a whole, or of the psyche, or of a system or organ of the body to function under the ordinary conditions of daily life including employment."). Whether VA has complied with these requirements is a legal question that the Court reviews de novo. *Faust v. West*, 13 Vet.App. 342, 348 (2000).

The Secretary bears the burden of establishing by a preponderance of the evidence that the rating reduction was warranted. *See Brown*, 5 Vet.App. at 421-22. Therefore, when the Board erroneously shifts the burden of proof to the veteran or fails entirely to discuss the required elements of *Brown*, the proper remedy is to reinstate the original rating. *Id*.; *see Stern v. McDonough*, 34 Vet.App. 51, 59 (2021) ("[T]he Board's failure entirely to address, as required by *Brown*, whether the improvement in the disability reflects an improvement in the ability to function under the ordinary conditions of life and work, also requires reversal of a rating reduction.").

Here, the Court concludes that the Board clearly erred by incorrectly addressing the legal questions at issue in this case: whether the evidence demonstrates that VA correctly applied the pertinent law and regulations, and whether, under those provisions, the reduction was proper. *See Brown*, 5 Vet.App. at 420-22. Although the Board correctly set forth the relevant caselaw and regulations governing reductions, *see* R. at 8-10, it failed to properly apply these principles in its analysis, *see* R. at 12-13. First, in determining that "the degree of additional limitation reflected would not result in symptoms more nearly approximating a 20 percent rating under DCs 5256 through 5262," R. at 13, the Board erroneously shifted the burden of proof to the veteran to show entitlement to the higher, prereduction rating, *see Kitchens v. Brown*, 7 Vet.App. 320, 325 (1995) ("[T]he Board improperly reversed the standard of proof by requiring the [veteran] to prove entitlement to restoration of his previous . . . rating."). Second, notwithstanding its conclusory assertion that "the record otherwise establishes that his left knee degenerative arthritis demonstrated improvement," R. at 13, the Board failed to address whether this improvement in the veteran's disability reflected an improvement in his ability to function under the ordinary conditions of life and work, as required by *Brown* and its progeny, *see Murphy v. Shinseki*, 26 Vet.App. 510, 517 (2014); *Faust*, 13 Vet.App. at 349; *Brown*, 5 Vet.App. at 421.

During the April 2021 VA exam, the veteran reported symptoms of left knee pain and swelling that were precipitated by running, "[taking the] stairs, [going] up or down hill, [walking on] uneven ground, and car[ry]ing heavy things" and that "[h]is pain . . . hinder[ed] him from being able to go to work." R. at 463. Similarly, the December 2021 DBQ documented "pain" and "swelling in the left knee," R. at 280, as well as the veteran's "trouble going up and down ladders and stairs" and "with running," R. at 282, which caused him to "miss work occasionally," R. at 298. Yet the Board did not even mention the veteran's prior VA exam results, much less adequately analyze whether there was an improvement in the veteran's ability to function under the ordinary conditions of life and work. *See Stern*, 34 Vet.App. at 58 (holding that the Board erred when it "failed to consider specific evidence and explicitly determine whether there was an improvement in the [veteran]'s ability to function under the ordinary conditions of life and work"); *see also Dofflemyer*, 2 Vet.App. at 281-82 (rejecting the Secretary's argument "focusing solely on the veteran's improvement from a medical perspective," which failed to account for the lay evidence of record regarding a lack of improvement under the ordinary conditions of life and work).

Because the Board improperly reduced the veteran's rating for left knee degenerative arthritis without complying with the substantive requirements for reduction, the Board's decision is void ab initio—a legal nullity. *See Kitchens*, 7 Vet.App. at 325 ("Where . . . the Court finds that the B[oard] has reduced a veteran's rating without observing applicable laws and regulation, such a rating is void ab initio and the Court will set it aside as 'not in accordance with law.'" (quoting 38 U.S.C. § 7261(a)(3)(A))); *Brown*, 5 Vet.App. at 422; *Dofflemyer*, 2 Vet.App. at 282. Accordingly, the Court will reverse the Board's decision and remand the matter with the direction that the Board reinstate the veteran's 20% disability rating. *See Schafrath v. Derwinski*, 1 Vet.App. 589, 596 (1991) ("It is implicit in these regulations that a service-connected rating reduction is invalid if these procedures are not followed.").

As a final matter, the Court recognizes that the veteran's informal brief addressed other disabilities, including his degenerative disc disorder, tinnitus, headaches, and depression, which have further affected his functional capabilities and his ability "to find and keep a job." Appellant's Informal Br. Supplement at 1-3.[7] However, because those issues were not adjudicated in the Board's September 2024 decision,[8] they are beyond the scope of the Court's current jurisdiction. *See* 38 U.S.C. §§ 7252(a), 7266(a) (granting the Court jurisdiction to review final decisions of the Board).

Given this disposition, the Court need not address any remaining arguments and issues raised by the veteran. *See Quirin v. Shinseki*, 22 Vet.App. 390, 395 (2009) ("[T]he Court will not ordinarily consider additional allegations of error that have been rendered moot by the Court's opinion or that would require the Court to issue an advisory opinion."); *Best v. Principi*, 15 Vet.App. 18, 20 (2001) (per curiam order). On remand, the Board must proceed expeditiously, in accordance with 38 U.S.C. § 7112.

---

[7] As indicated in his informal brief, the veteran also "emailed a three page br[ie]f/explanation," Appellant's Informal Br. at 3, so for the sake of clarity, the Court has referred to that separate submission as the veteran's informal brief supplement.

[8] The Board acknowledged that the veteran's January 2022 NOD mentioned his claim for PTSD, explaining that "the [v]eteran reported in his [NOD] that he submitted supporting evidence . . . in support of a PTSD claim." R. at 6; *see* R. at 162, 165. In reviewing the procedural history for this issue, the Board noted that the veteran had filed a claim for PTSD in November 2021, but later that month, VA notified him that "his request to readjudicate was not filed on the proper form," and VA "enclosed a [s]upplemental [c]laim form." R. at 7. However, because "the record d[id] not reflect that a [s]upplemental [c]laim was filed," R. at 7, the December 2021 rating decision did not address PTSD, *see* R. at 178-82, and thus, this issue "[wa]s not properly before the Board," R. at 7. As the Board explained, the veteran may still pursue his claim for PTSD if he so desires by filing a supplemental claim and submitting his new and relevant evidence. *See* R. at 7.

III. CONCLUSION

Based on the foregoing, the Board's September 11, 2024, decision is REVERSED, and the matter is REMANDED for reinstatement of the 20% rating for left knee degenerative arthritis as of November 3, 2021.

DATED: November 26, 2025

Copies to:

Mark D. Morrison

VA General Counsel (027)