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RESPONDENT'S BRIEF

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

ALLISON E. RANCHER,
Claimant-Appellant,

v.

JAMES B. PEAKE, M.D.,
Secretary of Veterans Affairs,
Respondent-Appellee.

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THE FEDERAL CIRCUIT
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Appeal from the Memorandum Decision of United States Court of Appeals for
Veterans Claims in 02-1142, Judge Alan G. Lance, Sr.

BRIEF FOR RESPONDENT-APPELLEE with Supplemental Appendix

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STATEMENT OF RELATED CASES

Pursuant to Rule 47.5, respondent-appellee's counsel states that he is unaware of any other appeal in or from this action that previously was before this Court or any other appellate court under the same or similar title.

Respondent-appellee's counsel is also unaware of any case pending in this or any other court that may directly affect or be affected by this Court's decision in this appeal.

BRIEF FOR RESPONDENT-APPELLEE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2008-7058

ALLISON E. RANCHER,
Claimant-Appellant,

v.

JAMES B. PEAKE,
Secretary of Veterans Affairs,
Respondent-Appellee.

STATEMENT OF THE ISSUES

- I. Whether the Veterans Court correctly concluded that it lacked jurisdiction to consider Ms. Rancher's assertion that the Board of Veterans' Appeals ("board") erred in not awarding her an effective date for her service connected psychiatric condition retroactive to February of 1984.
- II. Whether the Veterans Court engaged in improper fact-finding or improperly affirmed the board's decision on an alternative basis.
- III. Whether this Court has jurisdiction to review the Veterans Court's conclusion that the board's finding that Mr. Rancher withdrew her TDIU claim was not clearly erroneous.

STATEMENT OF THE CASE

I. Nature Of The Case

The appellant, Allison E. Rancher, appeals the memorandum decision of the United States Court of Appeals for Veterans Claims (“Veterans Court”) in Allison E. Rancher v. James B. Peake, M.D., Secretary of Veterans Affairs, No. 02-1142 (Vet. App. Oct. 24, 2007). Add. 1-141.¹ In this decision, the Veterans Court: (1) declined, based upon a lack of jurisdiction, to consider Ms. Rancher’s argument that she was entitled to an effective date for her 100% psychiatric disability retroactive to February 1984; (2) held that the board failed to state adequate reasons and bases to support its finding that the regional office’s March 1993 rating decision was final and remanded for further development of that matter; (3) held that the board failed to ensure that the VA had complied with a prior remand order concerning a 1999 medical examination and remanded for a new examination; (4) rejected Ms. Rancher’s claim of defective notice under 38 U.S.C. § 5103(a); and (5) affirmed the board’s finding that she withdrew her claim seeking a total disability rating based upon unemployability. Ms. Rancher’s appeal to this Court is limited to items (1) (lack of jurisdiction to considerer earlier effective date argument) and (5) (withdrawal of her TDIU claim).

¹ “Add. ___” refers to the addendum Ms. Rancher attached to her brief. “S.A.

II. Statement Of Facts And Course Of Proceedings Below

Ms. Rancher served as an Army officer on active duty from September 1980 to February 1984. Add. 2, 30. Ms. Rancher experienced psychiatric problems during military service that eventually resulted in her being separated from service. Add. 2, S.A. 1-6.

Ms. Rancher filed her initial claim for VA benefits with a VA Regional Office (regional office) on February 1, 1985, wherein she sought service connection for a "nervous condition." Add. 26-29. On July 24, 1985, the regional office awarded service connection for paranoid schizophrenia, and assigned a retroactive temporary total (100-percent) disability rating from January 29, 1985 to March 31, 1985, and a 30-percent rating prospectively from April 1, 1985. Add. 30-31. In the fall of 1985, Ms. Rancher received vocational counseling at the regional office. S.A. 7-8. A January 23, 1986 VA Rehabilitation Service progress report revealed that Ms. Rancher experienced conduct problems during her participation in rehabilitative educational activities, and on May 9, 1986, a VA rehabilitation counselor recommended that she be removed from the program until she and her doctor determined she was ready to attempt rehabilitation. Add. 36.

In 1988, the regional office issued three separate rating decisions, in September, November, and December. Add. 51-53, 54, 55. The September 1988

_____” refers to the Government’s Supplemental Appendix.

rating decision continued Ms. Rancher's 30-percent disability rating. Add. 53. The November 1988 decision concerned Ms. Rancher's claim for benefits while she was temporarily hospitalized. Add. 54. The December 1988 rating decision granted a temporary 100-percent rating for a period of hospitalization at a VA medical center ("VAMC") (September 29, 1988 to November 30, 1988) and maintained the prior 30-percent rating for the period beginning the date she was discharged from the VAMC. Add. 61-62. Ms. Rancher was again hospitalized at the VAMC from July to August 1991 and, in a August 1991 rating decision, the regional office granted a temporary 100-percent rating for that period of hospitalization. S.A. 10-12.

In September 1991, Ms. Rancher submitted a statement seeking a higher disability rating, S.A. 13-17, and a VA examination was conducted later that same month. S.A. 18-21. The examiner found Ms. Rancher's "mood and affect within normal limits" and noted "no delusions or hallucinations." S.A. 19. The examiner noted that her medication stabilizes her condition. Id. The examiner concluded that "[t]here is no social impairment at the present time." Id. An October 1991 rating decision confirmed the previous 30-percent evaluation. Add. 63-65.

In November 1992, Ms. Rancher again sought an increased rating for her psychiatric condition. S.A. 22. The regional office confirmed the previous 30-percent rating later that month. S.A. 23. In January 1993, Ms. Rancher again

sought an increased rating, asserting that her psychiatric disability had increased in severity. S.A. 24. In a March 1993 rating decision, the regional office increased Ms. Rancher's disability rating to 50-percent disabling, effective January 11, 1993. Add. 66-67.

In July 1995, Ms. Rancher submitted a claim for a total disability rating based on individual unemployability ("TDIU"). S.A. 25-26. A VA examination was conducted in October 1995 in connection with the TDIU claim. S.A. 27-28. The regional office denied Ms. Rancher's TDIU claim on April 20, 1996, S.A. 29-30, and she filed a timely notice of disagreement contesting that denial. S.A. 31. Following extensive additional development of her claim by the regional office, the matter proceeded to the board which, on February 26, 1999, remanded the matter back to the regional office. Add. 79.

The regional office, in an August 1999 supplemental statement of the case, increased Ms. Rancher's disability rating for paranoid schizophrenia to 100-percent, effective May 10, 1999 — the date of her most recent VA examination. Add. 80-84. In September 1999, Ms. Rancher submitted a Notice of Disagreement ("NOD") to this decision, asserting that the effective date of the 100-percent evaluation should have been July 1995. S.A. 32. In October 1999, a Statement of the Case was issued by the regional office denying entitlement to an effective date earlier than May 10, 1999, for a 100-percent rating for paranoid schizophrenia.

S.A. 33-43. Ms. Rancher's substantive appeal to the board, asserting the regional office erred in not assigning a July 1995 effective date, was received later that same month. Add. 86.

Extensive additional development again took place at the regional office. On June 22, 2000, Ms. Rancher submitted a letter to the regional office asserting entitlement to a TDIU rating retroactive to July of 1995 and again noting her disagreement with the denial of such benefits. Add. 89. On June 28, 2000, however, Ms. Rancher submitted a letter to the regional office stating she no longer wished to pursue her claim for entitlement to TDIU. Add. 90-91. That letter stated as follows: "I (Allison Rancher) [am] requesting that the letter dated 22 June 00 be withdrawn and destroyed with the notice of disagreement for 100% for paranoid schizophrenia to be rated Individual Unemployability." Add. 90-91.

On July 8, 2000, the regional office issued a Supplemental Statement of the Case confirming the denial of her TDIU claim. S.A. 43.1-44. Ms. Rancher, through her representative, pursued an appeal to the board seeking an earlier effective date for her 100-percent rating for paranoid schizophrenia. Add. 92-93.

On May 22, 2001, the board issued a decision awarding Ms. Rancher a 100-percent rating for her psychiatric condition effective December 11, 1996. Add. 100-112. In its analysis, the board determined that the July 12, 1995, VA examination pertaining to "schizoaffective disorder" constituted an informal claim

for an increased rating for schizophrenia. Add. 105. The Board also determined that Ms. Rancher had withdrawn her claim for TDIU in June of 2000, and that “[c]onsequently that claim is no longer before the Board.” Add. 101.

Ms. Rancher then pursued an appeal to the Veterans Court. On October 27, 2007, that court issued a memorandum decision that vacated the board’s decision denying her an effective date earlier than December 11, 1996, for her 100-percent disability rating for schizophrenia, concluding that the board did not adequately state its reasons or bases for this determination. The Veterans Court, however, affirmed other aspects of the board’s decision. Those aspects were: (1) the finality of VA rating decisions issued in September, October, and December of 1988, Add. 9, which, the Veterans Court held, divested it of jurisdiction to consider Ms. Rancher’s claim for an effective date of February 1984, because those decisions were not the subject of a clear and unmistakable error challenge, Add. 9-10; (2) whether the notice provided to Ms. Rancher under 38 U.S.C. § 5103(a) was sufficient, Add. 13; and (3) whether Ms. Rancher withdrew her appeal of the denial of her TDIU claim. Add. 13-14.

Following the denial of Ms. Rancher’s motion for reconsideration/panel review by the Veterans Court, she filed a timely notice of appeal to this Court. Add. 141.

SUMMARY OF THE ARGUMENT

The factual underpinnings of this appeal are complex and span VA claims and claims-related appeals over a period exceeding 23 years. Nevertheless, when distilled to its essence, this appeal involves some relatively simple issues.

The first issue is jurisdictional, and requires examination of whether the Veterans Court correctly determined that it lacked jurisdiction to consider Ms. Rancher's argument that her original 1985 VA benefit claim remains pending, and whether the Veterans Court erred in not considering whether Ms. Rancher is entitled to an effective date retroactive to when she separated from military service in 1984. In this regard, Ms. Rancher's failure to file a notice of disagreement to the December 1988 rating decision, which was the final rating decision of the series of rating decisions dating back to her original 1985 benefit claim, rendered that decision final in December of 1989. See 38 U.S.C. § 7105(b) (a notice of disagreement must be filed within one year of the mailing of the initial review or determination.). Accordingly, the Veterans Court appropriately concluded that it lacked jurisdiction to consider Ms. Rancher's claim seeking an effective date retroactive to 1984. This Court should affirm that determination.

The second issue is whether the Veterans Court affirmed the board's decision on a new basis or engaged in improper fact finding in violation of Sec. & Exch. Comm'n v. Chenery Corp., 318 U.S. 80, 87 (1943), and Sec. & Exch.

Comm'n v. Chenery Corp., 332 U.S. 194, 196 (1947). The Veterans Court did not do so. The court merely reviewed the existing record and determined as a matter of law that the regional office's 1988 decisions precluded Ms. Rancher from any entitlement to a 1984 effective date. The court's decision thus does not present a Chenery problem.

The third issue in this case is whether this Court has jurisdiction to review the Veterans Court's factual conclusions regarding whether Ms. Rancher had withdrawn her TDIU claim. The Veterans Court evaluated the pertinent facts, in particular the letter she submitted to the regional office regarding her TDIU claim, and concluded that the requirements for withdrawal of a claim as set forth in 38 C.F.R. § 20.204 were present. The Veterans Court then concluded that "the Board's finding that the appellant's TDIU claim had been withdrawn is not clearly erroneous." Add. 13. The review by this Court of the Veterans Court's findings concerning whether Ms. Rancher's TDIU claim was withdrawn would require the application of law to the facts of this case and would therefore be outside the jurisdiction afforded to this Court under 38 U.S.C. § 7292(d)(2).

ARGUMENT

I. Standard Of Review And Scope Of Jurisdiction

Pursuant to 38 U.S.C. § 7292(a), this Court may review a Veterans Court decision with respect to the validity of the decision on a rule of law or of any

statute or regulation or any interpretation thereof relied on by the Veterans Court in making that decision. Under 38 U.S.C. § 7292(c), this Court has exclusive jurisdiction “to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof brought under this section, and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision.” Section 7292(d)(2) of title 38, United States Code, provides that, except to the extent that an appeal from a Veterans Court decision presents a constitutional issue, this Court “may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.”

In reviewing a Veterans Court decision, the Court must decide “all relevant questions of law, including interpreting constitutional and statutory provisions” and must set aside any regulation or interpretation thereof “other than a determination as to a factual matter” relied upon by the Veterans Court that it finds to be: “(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or (D) without observance of procedure required by law.” 38 U.S.C. § 7292(d)(1). The Court reviews questions of statutory and

regulatory interpretation de novo. See Smith v. Brown, 35 F.3d 1516, 1517 (Fed. Cir. 1994).

In addition, 38 U.S.C. § 7292(d)(2) provides that, except to the extent that an appeal from a Veterans Court’s decision presents a constitutional issue, this Court “may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.” See Stillwell v. Brown, 46 F.3d 1111, 1113 (Fed. Cir. 1995) (matter involving determination of facts and application of legal standard to those facts is specifically excluded from this Court’s jurisdiction). In other words, the Veterans Court has final authority over factual determinations and applications of the law to the facts of a particular case if no constitutional issues are presented. See Spencer v. Brown, 17 F.3d 368, 374 (Fed. Cir. 1994).

This Court’s jurisdiction under section 7292 is further normally limited to review of final decisions of the Veterans Court. Joyce v. Nicholson, 443 F.3d 845, 849 (Fed. Cir. 2006). Accordingly, this Court does not typically review Veterans Court remand orders because they are not final judgments. Id. The Court departs from this “strict rule of finality” concerning remand orders only if three conditions are satisfied: (1) the Veterans Court decision remanding the case to the VA clearly and finally decides a legal issue that (a) is separate from the remand proceedings, (b) will directly govern the remand proceedings, or (c) if reversed by this Court,

would render the remand proceedings unnecessary; (2) resolution of the legal issue adversely affects the party seeking review; and (3) there is a substantial risk that the decision would not survive a remand, i.e., that the remand proceeding may moot the issue. Williams v. Principi, 275 F.3d 1361, 1364 (Fed. Cir. 2002).

Here, we do not contest that this Court may possess jurisdiction to entertain a portion of this appeal, despite the non-final appearance of the Veterans Court's decision. Ms. Rancher challenges the Veterans Court's holding that she is not entitled to a 1984 effective date. App. Br. 11-27. Ms. Rancher bases her argument upon the theory that her 1984 claim remains pending. See, e.g., App. Br. 27. This theory is unrelated to the Veterans Court's remand to the board to reconsider the board's finding that Ms. Rancher is entitled to a 1996 effective date — nothing in the remand proceeding will affect Ms. Rancher's claim to a 1984 effective date. Further, if this Court reverses the Veterans Court's holding concerning the 1984 effective date, the remand proceedings could be mooted, because if Ms. Rancher is entitled to an effective date based upon her original claim, the effective date of her subsequent claims would be irrelevant.

II. The Veterans Court Did Not Misinterpret 38 U.S.C. § 7252(a) Or 38 U.S.C. § 7261(a) In Concluding That It Lacked Jurisdiction To Consider Ms. Rancher’s Argument That The Board Erred In Not Awarding Her An Effective Date For Her Service-Connected Psychiatric Condition Retroactive To 1984.

Section 7252 of title 38, United States Code, the statute that confers jurisdiction upon the Veterans Court, provides in pertinent part that: “The [Veterans Court] shall have exclusive jurisdiction to review decisions of the [Board] [and] [r]eview in the [Veterans Court] shall be on the record of proceedings before the Secretary and the Board. The extent of the review shall be limited to the scope provided in [38 U.S.C. §] 7261.” Section 7261 prescribes the scope of the Veterans Court’s review and authorizes the Veterans Court to decide all relevant questions of law and set aside decisions, findings, and conclusions of the Secretary of Veterans Affairs or the board that do not meet various standards, but only “to the extent necessary to its decision and when presented.” 38 U.S.C. § 7261(a).

In the instant case, Ms. Rancher argued before the Veterans Court that the board erred in not awarding her an effective date earlier than December 11, 1996, for her 100% rating for her service-connected psychiatric condition. Add. 114-117. The Veterans Court’s decision contains a detailed analysis of this argument. The Veterans Court began by tracing the relevant history of Ms. Rancher’s VA claim and discussing the applicable law and regulations, 38 U.S.C. § 5110(a) and

(b)(1) and (b)(2), governing the assignment of effective dates in VA cases. Add.

8-9. These provisions, which contain the rules governing effective dates for increased ratings in VA cases, provide as follows:

Unless specifically provided otherwise in this chapter, the effective date of an award based on . . . a claim for increase, of compensation . . . shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.

38 U.S.C. § 5110(a).

Section 5110(b)(1) and (b)(2) establish exceptions, for claims for an increased rating, to the general rule that an award may not be earlier than the date of the claim, when a claim is filed within one year of the date of separation from service. These provisions state as follows:

(b)(1) The effective date of an award of disability compensation to a veteran shall be the day following the date of the veteran's discharge or release if application therefore is received within one year from such date of discharge or release.

(2) The effective date of an award of increased compensation shall be the earliest date as of which it is ascertainable that an increase in disability had occurred, if application is received within one year from such date.

38 U.S.C. § 5110(b).

The Veterans Court examined the terms of these statutes, along with VA's regulation, 38 C.F.R. § 3.400, implementing these provisions, in the context of Ms. Rancher's argument that she was entitled to an effective date retroactive to

when she separated from service in February of 1984,² and concluded that it lacked jurisdiction to consider these arguments. Add. 9-10. The basis for this determination was a finding that the July 1985 regional office determination on Ms. Rancher's original benefit claim became final in December 1989, and had not been the subject of a challenge asserting clear and unmistakable error under 38 U.S.C. § 5109A. Add. 9-10. The Veterans Court stated as follows:

In short, the appellant's initial claim was subject to an administrative decision that became final for purposes of direct appeal no later than December 1989. Accordingly, she cannot receive an effective date of February 1984 unless a motion to reverse or revise one of those RO decisions on the basis of clear and unmistakable error (CUE) is filed. . . . The record does not indicate that the appellant has ever filed such a motion, and the Board did not rule upon the merits of the same in the decision here on appeal. The Court, therefore, has no jurisdiction to consider the appellant's argument for a February 1984 effective date as part of this appeal.

Add. 9-10 (citations omitted).

In so ruling, the Veterans Court essentially found that the "rule of finality" precluded it from considering Ms. Rancher's argument in favor of an earlier effective date. In VA benefits cases, the rule of finality holds that, absent a specific statutory exception, when a case or issue has been decided and an appeal

² The May 22, 2001, board decision that underlies this case concluded that evidence that her psychiatric condition had increased in severity was first demonstrated on December 11, 1996, and awarded her a 100% disability rating retroactive to that date. Add. 107.

has not been taken within the time prescribed by law, the case is closed and no further review is permissible. See Leonard v. Nicholson, 405 F.3d 1333, 1337 (Fed. Cir. 2005) (“The purpose of the rule of finality is to preclude repetitive and belated readjudications of veterans’ benefits claims.” (quoting Cook v. Principi, 318 F.3d 1334, 1339 (Fed. Cir. 2002) (en banc))).

In this case the VA regional office issued several rating decisions in 1988 derivative to Ms. Rancher’s original 1985 benefit claim, with the latest of these being in December of 1988. Add. 9. While Ms. Rancher argues that “[s]he timely filed NODs in April of 1988” and that “[t]he VA has not provided her with a Statement of the Case to appeal,” she does not identify these documents. App. Br. at 20. A review of the record reveals that the first NOD Ms. Rancher filed with regard to her psychiatric condition was submitted in June of 1996. S.A. 31. In order for the Veterans Court to have exercised jurisdiction over Ms. Rancher’s argument in favor of an effective date retroactive to 1984, there would have had to have been a board decision addressing the finality of the claim stream that originated with her original 1985 benefit claim and concluded with the unappealed December 1988 rating decision. Absent such a decision, there was simply no basis for the Veterans Court, under 38 U.S.C. § 7252(a) or 38 U.S.C. § 7261(a), to consider such an argument.

As explained by the Veterans Court, a statutory exception to the rule of finality exists, under 38 U.S.C. § 5109A, when a decision is subject to revision based upon clear and unmistakable error (“CUE”). Cook, 318 F.3d at 1337. A finding of CUE permits the effective date of an award to relate back to the date of the original claim. Id. at n.3. Ms. Rancher remains free to file a claim seeking review of any or all of the rating decisions issued by the regional office in her case based upon an assertion of CUE. See 38 U.S.C. § 5109A.

Both before the Veterans Court, Add. 117, and in her brief before this Court, Ms. Rancher argues that her submission, in 1986, of additional evidence in the form of a statement from a VA rehabilitative specialist tolled the period for filing an appeal of her original 1985 benefit claim. App. Br. at 21-27. Her argument is, in brief, that she submitted additional evidence in 1986 that was not addressed when the regional office rendered its 1988 decision and, because that claim has remained adjudicated, the Veterans Court erred in not considering her argument in favor of a 1984 effective date. App. Br. at 26-27.

The flaw in this argument is that it presumes that the purported claim she submitted in 1986 was not considered by the regional office prior to issuance of its December 1988 rating decision. While it is true that none of the 1988 rating decisions explicitly refer to the document she submitted from her rehabilitation counselor in 1986, she does not assert that this document was not part of the

record or that it was not considered by the regional office. See Gonzalez v. West, 218 F.3d 1378, 1380-1381 (regional office is presumed to have considered all the evidence of record absent some showing to the contrary). While the submission of the 1986 document may, under 38 C.F.R. § 3.156(b), have been sufficient to toll the appeal period from the regional office's 1985 rating decision on her original benefit claim, that appeal period began anew following the issuance of the December 1988 rating decision. The Veterans Court specifically addressed this issue, stating:

The Court will assume, for purposes of this appeal, that the RO's July 1985 rating decision was rendered non-final upon receipt of the appellant's July 1986 vocational rehabilitation report. See 38 C.F.R. § 3.156(b) [] Nonetheless, the appellant still cannot receive a February 1984 effective date. As previously noted, the RO's receipt of § 3.156(b) compliant evidence only tolls the time for filing an appeal until a new decision has been issued. The record indicates that the RO issued new rating decisions on the appellant's initial claim in April, September, October, and December 1988.

Add. 9

Ms. Rancher argues that because she submitted new and material evidence, under 38 C.F.R. § 3.156(b), before the appeal period from her original 1985 claim expired, her original claim remains open, App. Br. at 17, 20, 26. Specifically, Ms. Rancher states that “[t]he Veterans Court’s findings that the September, October, and December 1988 VA decisions denied her original claim were based upon its

implicit misinterpretations of law and resulting [in the] incorrect conclusion that Ms. Rancher's original claim was the same claim as a new claim for an increased rating." App. Br. at 20. Ms Rancher does not identify the purported "implicit misinterpretations of law." However, from the text of her brief that follows this statement, it appears she believes that new claims are distinguishable from claims to reopen under 38 C.F.R. § 3.160, and that she thus submitted new claims that were not addressed by VA in any of the 1988 rating decisions. While Ms. Rancher is correct that, from a definitional standpoint as described in 38 C.F.R. § 3.160, original claims, claims to reopen, and claims for increase are construed by VA as different types of claims, it does not follow that the adjudication of these various claims must take place via a rating decision that individually addresses each and every claim and/or piece of evidence submitted.

The record in this case reflects that in the years immediately following her discharge from service, Ms. Rancher experienced significant problems and was hospitalized for her psychiatric condition on multiple occasions. The information relevant to medical and personal problems she was experiencing was, over a course of years, presented to VA. This information resulted in the issuance, in 1988, of three separate rating decisions. Add. 51, 54, 61. Each of these rating decisions addressed the severity of Ms. Rancher's schizophrenia, as well as her service-connected knee condition. The December 1988 rating decision discussed

Ms. Rancher's hospitalization history and the impact of medication on her condition, and it identified the specific dates for which she was rated as 100% disabled, due to a hospitalization. Add. 62. Notwithstanding the assertion contained in Ms. Rancher's brief about the specific terms used by the regional office in these rating decisions, App. Br. at 27, the decisions demonstrate that VA gave adequate consideration to the evidence presented in her claim. Moreover, the inclusion of information pertaining to when Ms. Rancher's rating was increased to 100% due to hospitalization clearly placed her on notice as to the effective dates for her psychiatric rating. Any disagreement with that rating could have been challenged by the filing of a notice of disagreement.

As described by the Veterans Court's decision in Ingram v. Nicholson, 21 Vet. App. 232, 243 (2007), reasonably raised claims "remain pending only until there is recognition of the substance of the claim." Similarly, in Gonzalez, this Court stated that "absent specific evidence indicating otherwise, all evidence contained in the record at the time of the RO's determination of service connection must be presumed to have been reviewed by [VA] and no further proof of such review is needed." 218 F.3d at 1380-81. In this case, the regional office in 1988 considered all relevant information pertinent to evaluation of the severity of Ms. Rancher's psychiatric condition and reached a conclusion as to that rating. Ms. Rancher did not appeal that decision and it became final. Absent submission of a

CUE claim challenging the finality of the December 1988 decision, there is simply no basis for the Veterans Court to consider her arguments concerning an effective date for her psychiatric condition retroactive to 1984. Accordingly, this Court should affirm the Veterans Court's decision that it lacked jurisdiction to consider this argument.

III. The Veterans Court Did Not Affirm The Board's Decision On A New Basis Or Engage In Improper Fact Finding

Ms. Rancher asserts that the Veterans Court's decision "violates the long-standing principle of administrative law that a court reviewing an agency decision generally may not sustain the agency's ruling on a ground different from that invoked by the agency," citing Mayfield v. Nicholson, 444 F.3d 1328, 1335-36 (Fed. Cir. 2006), Sec. & Exch. Comm'n v. Chenery Corp., 318 U.S. 80, 87 (1943), and Sec. & Exch. Comm'n v. Chenery Corp., 332 U.S. 194, 196 (1947). App. Br. 16-17. Ms. Rancher asserts that the Veterans Court "should have remanded the case to the Board instead of engaging in initial fact-finding." App. Br. 17 (citing Mayfield and Hensley v. West, 212 F.3d 1255, 1263-64 (Fed. Cir. 2000).

In Chenery, the Supreme Court held that "[t]he grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based." 318 U.S. at 87. The Supreme Court held in Chenery, 318 U.S. at 88-95, that the Securities and Exchange Commission applied the wrong standards to the adjudication of a complex factual situation and therefore

the Court would not decide whether the Commission's result might have been justified on some other basis.

Yet, "the Chenery doctrine is not applied inflexibly." Fleshman v. West, 138 F.3d 1429, 1433 (Fed. Cir. 1998). This Court has explained that the Chenery doctrine does not prohibit a reviewing court from affirming an agency decision on a ground different from the one relied upon by the agency if the agency has already exercised its discretion and made findings providing a complete factual predicate for the court's legal conclusion. Fleshman, 138 F.3d at 1433.

Ms. Rancher's assertion that the Veterans Court's decision violates Chenery is misguided. The Veterans Court's decision here does not present a Chenery problem. The Veterans Court reviewed the record — prompted by Ms. Rancher's appeal — and held that it could not consider Ms Rancher's arguments concerning eligibility for a 1984 effective date. In so doing, however, the Veterans Court found that, as a matter of law, the RO's receipt of new evidence "only tolls the time for filing an appeal until a new decision has been issued," and that there was nothing in the record to indicate the filing of a claim seeking to reverse or revise any of the RO's determinations based upon CUE. Add. 9-10. The court then noted that the "record indicates that the RO issued new rating decisions on the appellant's initial claim in April, September, October, and December 1988." Id. The Veterans Court did not find new facts in reaching this conclusion. Unlike

Mayfield, where the Veterans Court affirmed the board’s decision based upon its own factual findings, the court here merely noted the existence of the RO’s decisions — and the absence of a challenge to their finality — and ruled upon their effect as a matter of law. Ms. Rancher improperly finds fault with the court’s decision.

IV. This Court Lacks Jurisdiction To Review The Veterans Court’s Conclusion Regarding Whether Ms. Rancher Withdrew Her TDIU Claim As It Would Require Factual Conclusions And The Application Of Law To The Facts Of Her Particular Case

Ms. Rancher next asserts that the Veterans Court erred in affirming the board’s conclusion that she withdrew her claim for TDIU. App. Br. 28-35. In particular, Ms. Rancher asserts that the court “misinterpreted the VA duty to construe liberally all submissions by a claimant because the Court ignored the November 2000 and January 2001 written submissions to the VA on the Appellant’s TDIU claim and the Court ignored that the Board had not considered these submissions.” Id. at 33-34. Ms. Rancher also asserts that the court “made an initial and improper finding of fact that Ms. Rancher’s letter was ‘unambiguous.’” Id. at 34. Finally, she argues that, in light of her letter’s “ambiguity,” the board’s finding was not supported by adequate reasons or bases. Id. at 35.

This Court lacks jurisdiction to entertain these arguments. As Ms. Rancher admits, the board’s “determination on whether Ms. Rancher’s June 2000 letter to the RO constituted a withdrawal of her appeal is a finding of fact” that the

Veterans Court reviewed under a clearly erroneous standard. App. Br. 32; see also Kalman v. Principi, 18 Vet. App. 522, 524 (2004); Hanson v. Brown, 9 Vet. App. 29, 32 (1996). This Court lacks jurisdiction to review such a factual challenge. See Lennox v. Principi, 353 F.3d 941, 946 (Fed. Cir. 2003) (“[A]part from constitutional issues we, of course, have no jurisdiction to determine whether in a particular case the application of the established law to the facts at issue passed muster under the clearly erroneous standard.”).

A review of the Veterans Court’s finding concerning whether the Board’s determination was “not clearly erroneous” would require this Court to review the application of law, 38 C.F.R. § 20.204, to the facts of the case. This is clearly a matter outside the jurisdiction afforded to this Court under 38 U.S.C. § 7292(d)(2). To the extent there is any question with regard to whether this Court should consider this issue, we note that appellant’s primary argument on this matter is that the June 2000 letter she submitted to the regional office concerning her TDIU claim was ambiguous. App. Br. at 28. The consideration, by this Court, of whether such a letter was in fact ambiguous, would require this court to independently consider and weigh facts, and then apply the law governing withdrawal of VA benefit claims to those facts. Engaging in such a review would exceed the jurisdiction afforded this Court under 38 U.S.C. § 7292(d)(2). Accordingly, this Court should decline to entertain this portion of Ms. Rancher’s

appeal.

CONCLUSION

For the foregoing reasons, the decision of the Veterans Court should be affirmed.

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July 18, 2008

Attorneys for Respondent-
Appellee

SUPPLEMENTAL
APPENDIX

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DEC 15 1983

INPATIENT-TREATMENT RECORD COVER SHEET

AHM/c 15 Dec 83

| | | | | | | | |
|---|-------------------------------|---|--|---|-------------------------------------|--|---|
| 1. REGISTER NUMBER 5301010 | | 2. NAME (Last, First, MI) RANCHER ALLISON E | | | 3. GRADE 1LT | ADMISSION REMARKS I CERTIFY THAT I HAVE READ THE WARD REGULATIONS OF THIS HOSPITAL.  | |
| 4. SEX F | 5. AGE 26 | 6. RACE NEG | 7. RELIGION B | 8. LENGTH OF SVC 003 | 9. ETS INDEF | | 10. PREVIOUS ADMISSION NO |
| 11. EMP 20 | 12. SSN 417-84-5098 | | 13. ORGANIZATION CO A 107TH MI BN FT | | 14. WARD 04W- | | 20. TYPE CASE DIS |
| 15. FLYING STATUS | 16. RATING / DSG | 17. DEPT / BEN ARMY | 18. BRANCH / CORPS MI | 19. UIC / ZIP 93941 | | | 23. CLINIC SERVICE PSY |
| 21. SOURCE OF ADMISSION / AUTHORITY FOR ADMISSION REF FR S B HAYS ACH FT ORC CA | | | | 22. HOUR OF ADMISSION 1315 | 25. TYPE DISPOSITION Duty | | 26. DATE OF DISPOSITION 09 Dec 83 |
| 24. NAME / RELATIONSHIP OF EMERGENCY ADDRESSEE M/LULA L | | | | 27. ADDRESS OF EMERGENCY ADDRESSEE (Include ZIP Code) 520 SPRINGFIELD AVE EUTAW AL 3546 | | 28. DATE OF THIS ADMISSION 28/10/83 | |
| 29. NAME AND LOCATION OF MEDICAL TREATMENT FACILITY LETTERMAN AMC PRESIDIO OF S.F. CA 94129 | | | | 30. DATE OF INITIAL ADMISSION 05/10/83 | | 32. UNITS OF WHOLE BLOOD / COMPONENT TRANSFUSED 0 | |
| 31. SELECTED ADMINISTRATIVE DATA | | | | | | | |

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33. CAUSE OF INJURY

34. DIAGNOSES, OPERATIONS AND SPECIAL PROCEDURES

Dg 1. DSM III (AXIS I) 2989 *psychosis* Atypical, acute, severe, treated, resolved; manifested by the absence of a precipitating event, command auditory hallucinations, thought insertions, and withdrawal, persecutory delusions and duration less than two weeks. STRESS: moderate, multiple command administrative problems. PREDISPOSITION: Moderate, paranoid personality traits. MILITARY IMPAIRMENT: None. IMPAIRMENT FOR SOCIAL AND INDUSTRIAL ADAPTABILITY: None. *LOD-700*

Dg 2. DSM III (AXIS II) 3010 Paranoid personality trait, chronic, moderate, treated, and not improved. Manifested by suspicion limited to her chain of command. STRESS: Moderate, command administrative problems. PREDISPOSITION: Not applicable. IMPAIRMENT FOR MILITARY DUTY: *REVIEWED BY* Mild, IMPAIRMENT FOR SOCIAL AND INDUSTRIAL ADAPTABILITY: *Individual* None. *LOD 700* CHIEF OF *Psych-SVC*

I HAVE REVIEWED THIS CHART AND CONCUR WITH THE DISPOSITION.
Col. Dept. of Psychiatry

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| | | | | | | |
|--|---------------|-----------------------------|---|-------------|--------------------|--|
| 35. TOTAL DAYS THIS FACILITY | | | | | | |
| a. ABSENT SICK DAYS | b. OTHER DAYS | c. CONV LV / COOP CARE DAYS | d. SUPPLEMENTAL CARE DAYS | e. BED DAYS | f. TOTAL SICK DAYS | |
| | | | | 42 | 42 | |
| 36. TOTAL DAYS ALL FACILITIES | | | | | | |
| a. ABSENT SICK DAYS | b. OTHER DAYS | c. CONV LV / COOP CARE DAYS | d. SUPPLEMENTAL CARE DAYS | e. BED DAYS | f. TOTAL SICK DAYS | |
| | | | <i>Pract</i> | 65 | 65 | |
| SIGNATURE OF APPOINTING MEDICAL OFFICER THEODORE S. NAM, CPT, MC | | | SIGNATURE OF PAD OR MEDICAL RECORDS OFFICER 322 | | | |

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**MEDICAL BOARD - SELAS . MATS ARMY COMMUNITY MOS VAL
FORT ORD, CA 93962**

ADH. DATE: 5 Oct 89 DISCH. DATE: NO. OF DAYS:

MEDICAL EVALUATION BOARD

MILITARY HISTORY: 1LT Allison E. Rancher entered active duty on 14 September 1980. She has been in the service for a period of 2 1/2 years. She had Basic Combat Training at Aberdeen Proving Ground, Maryland. Her ETS was 11 September 1985, but the servicemember wanted to apply for U.S. Army Indefinite in January 1986. The patient has spent 19 months at Fort Hunter Liggett and has been here at Fort Ord for the past 9 months. She is a maintenance officer with an MOS 91A.

CHIEF COMPLAINT: Paranoid and persecutory delusions, very inappropriate and bizarre behaviors in her unit.

HISTORY OF PRESENT ILLNESS: The patient is a 25-year-old black single female who was a command referral to Community Mental Health Activity because of behavior problems in her unit. This included unreasonable personality conflicts, not using the chain of command in her unit, and making unfounded allegations of racial and sexual discrimination. The servicemember has been ineffective at her job and her unit's attempts at dealing with problems were unsuccessful because of the patient's lack of cooperation. The patient refused hospitalization and had to be given direct order from the Acting Hospital Commander, COL D'Ambro, at the time of admission. The patient hired a civilian lawyer and filed a congressional complaint for she believed that she could not trust the U.S. Army and that her rights were being denied. The patient has increased paranoid delusions and would not receive any help from peers in her unit. LTC Faulk, the psychiatrist who saw her at CMHA, gave the servicemember a diagnosis of bipolar hypomanic episode.

Apparently, the patient formerly worked at Fort Hunter Liggett. She reports a long history of unit problems centered around the patient's perception that the civilian workers were not doing their job right and they began rumors that she was not doing her job, either. This apparently caused her immediate supervisors to become involved with an expeditious discharge and the patient has been processed from Fort Hunter Liggett back to Fort Ord, per her request. The patient feels that the initial rumors have also been sent back with her and a problem with the first civilian, who was a Chief Warrant Officer 3, has

AURORA L. CRISTOBAL, LTC, MC

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| <input type="checkbox"/> HISTORY & PHYSICAL EXAMINATION (SF 502) | <input type="checkbox"/> OPERATION REPORT (SF 502) | NAME RANCHER, ALLISON E. 1LT | |
| <input type="checkbox"/> CONSULTATION SHEET (SF 502) | <input checked="" type="checkbox"/> NARRATIVE SUMMARY (SF 502) | REGISTER NO. 672 355 7W | SON 20 417 84 5003 |
| <input type="checkbox"/> CHRON RECORD OF MEDICAL CARE (SF 502) | <input type="checkbox"/> AUTOPSY PROTOCOL (SF 502) | UNIT A CO 107TH HI | |
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escalated into a congressional investigation. The patient states that the current and previous units are exerting a tremendous amount of pressure and she feels that being sent here for psychiatric hospitalization is the last straw. The patient was admitted for further evaluation, treatment and disposition.

PAST HISTORY: The patient was born and raised in Alabama. Her parents are in their late 40s. She is the third from the oldest of six siblings, with three boys and three girls. The patient has not been married. The patient had mumps, measles and chicken pox, and, in grade school, she was treated for tuberculosis with Isoniazide (INH), secondary to exposure to a tuberculous person. The patient had only minor colds and denies any history of mental illness in the past. The patient had an abortion prior to coming into the U.S. Army. She has knee problems, incurred during basic training and she states that she has a P-3 profile. The patient has no allergies. She does not smoke and admits to being a social drinker with mixed drinks and wine, only. The patient denies any usage of illegal drugs. The patient states that she uses diet pills, one tablet per day occasionally since April 1963 because she would like to curve her appetite.

REVIEW OF SYSTEMS: Non-contributory.

PHYSICAL EXAMINATION: Her physical examination was within normal limits. Her vital signs were within normal limits. The patient is 5 ft 6 inches in height. She weighs 145 lbs. Blood pressure is 106/82 mmHg. Pulse rate was 107 on admission and she is afebrile.

MENTAL STATUS EXAMINATION: On admission, the patient was alert, oriented in the three spheres and in no acute distress. She has increased agitation and restlessness, and is very indifferent and suspicious with increased paranoid and persecutory delusions and illusions. She complained of her inability to trust anyone in the U.S. Army. The patient felt that the U.S. Army was doing bad things to destroy her, which is why she hired a civilian lawyer and filed a congressional complaint. The patient admits to increased auditory hallucinations with different voices talking to her and giving her orders or commands. The patient has very illogical and autistic thinking and her affect and her behaviour was very inappropriate. She has very poor concentration span. She has very psychotic on admission, though she presented no evidence of organicity. The patient is not suicidal or homicidal, but could be an elopement risk.

AUREOLA L. CRISTOVAL, LTC, MC

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| <input type="checkbox"/> CONSULTATION SHEET (SF 513) | <input type="checkbox"/> NARRATIVE SUMMARY (SF 512) | REGISTER NO. 672 355 74 | SSN 26 417 BA 5052 |
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MEDICAL DEPARTMENT
FORT ORD, CA 93948

LABORATORY AND X-RAY SERVICES: Routine lab work and an abdominal, such as CBC, SGOT, serum bilirubin, BUN, routine urinalysis, AFP, were all within normal limits. Chest X-ray was not ordered.

CONSULTATIONS: MHPA showed moderate elevation in the toxic screen.

HOSPITAL COURSE: The patient came not on her own but by direct command order by the Acting Hospital Commander and by her Battalion officer. She was very psychotic, suspicious and indignant, and refused to admit that she had a problem. The patient arrived at the Ward at approximately 1800 hours on 3 October 1983. A decision had been made to transfer her to Letterman Army Medical Center on 7 October 1983. Therefore, on 6 October 1983, she was allowed to return to the home she was visiting in Salinas, with three escorts: SFON her unit including her new commanding officer, CPT Mitchell, and two female escorts. The patient wanted to drive her Datsun 240Z and, therefore, LT Adair, a female officer, drove her car and the patient was in the passenger's seat. Several miles before she arrived at her home, she jumped from the car and ran into an open field where there were farmers, she took off her boots, her pants and blouse and kept running and screaming to the commanding officer had to go to a private telephone booth and call to the hospital and request an ambulance. After the ambulance was on its way, I was called to witness later to control the ambulance because the patient went into the car voluntarily. After driving around 1 mile, the patient again jumped from the car and had to be subdued. The commanding officer again called an ambulance later on 7 October, requested her own ambulance. The ambulance arrived with two men who escorted the patient into the ambulance and she was taken back to the Psychiatry Ward. Upon arrival, she was given 10 mg of haloperidol, which sedated the patient and, at bedtime, she was given another 10 mg of haloperidol concentrate. The following morning, the patient was no longer agitated. She was less psychotic and she apologized for her inappropriate behavior, though she stated she was still very confused and disoriented. She indicated that she would sign any power of attorney to have the Army take care of her personal belongings, because she could not support the Army. Therefore, she called her lawyer in Salinas and wished to get in touch with her congressman. The patient's transfer to LAMC was cancelled because of other reasons. It was, therefore, discussed with the patient that she will be presented to the Medical Evaluation Board. The patient got very furious and angry and she stated that she will continue with her complaints because she felt that there was nothing wrong with her.

AURORA L. CRISTOBAL, LTC, MC

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| <input type="checkbox"/> HISTORY & PHYSICAL EXAMINATION <small>(SF 28, SF 285, & SF 287)</small> | <input type="checkbox"/> OPERATION REPORT <small>(SF 28)</small> | NAME BANCHES, ALLISON R. ILT | |
| <input type="checkbox"/> CONSULTATION SHEET <small>(SF 28)</small> | <input type="checkbox"/> NARRATIVE SUMMARY <small>(SF 28)</small> | REGISTER NO. 072 287 70 | GOV. 28-817 24 9696 |
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PRESENT STATUS: The patient is stable on her current regimen of medications. She was treated with haloperidol concentrate, 10 mg at noon and 40 mg at bedtime and 2 mg two times a day of Cogentin with very good effect and one Prenatal vitamin daily. At the time of this dictation, the noon dose of haloperidol was discontinued and all of her medications were given at bedtime. The patient continued to improve remarkably with this treatment regimen. She is also being exposed to hospital milieu, Occupational Therapy and group psychotherapy. The patient insisted that she be discharged from the service. Otherwise, she will call her lawyer and continue with her congressional complaint. She felt that she could not trust people and that was her natural personality and there was nothing wrong with her. She stated that she was just under a lot of pressure, which is why she behaved the way she did, but she could not accept that it was inappropriate.

- DIAGNOSIS:**
- (Axis I) Schizophrenic disorder, paranoid type, chronic with acute exacerbation, psychotic on admission, markedly improved with treatment. Manifested by psychosis, persecutory and paranoid delusions, ideas of reference, lessening of association, auditory hallucinations, disorganized behavior with deterioration from previous level of functioning. Precipitating stress: Feelings of racial and sexual discrimination at work. Predisposition: Mixed personality disorder. Impairment for the military is complete and for civilian and industrial adaptability is definite to slight. Line of Duty: Yes. Profile: 54P. (Underlying cause) AE 40-501, Chapter 3-29.
 - (Axis II) Paranoid avoidant mixed personality disorder. Profile: 52P. Line of Duty: No. AE 40-501, Chapter 3-_____.
 - Rule out manic disorders, with mood incongruent psychotic features. Not psychotic now.

AURORA L. CRISTGAL, LTC, MC

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| <input type="checkbox"/> HISTORY & PHYSICAL EXAMINATION (SF 314, SF 317, & SF 317a) | <input type="checkbox"/> OPERATION REPORT (SF 316) | NAME LANCHER, ALLISON E. 1LT | |
| <input type="checkbox"/> CONSULTATION SHEET (SF 317) | <input type="checkbox"/> NARRATIVE SUMMARY (SF 302) | REGISTER NO. 672-355 74 | SSN 20 417 P4 5058 |
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REMARKS: Diagnosis 1 for 1 was determined to be Line of Duty, War, but on IPRB had to be ruled out in view of poor job performance and the poor attitude of this servicemember from the time she entered the service. Also, telephonic conversations with her younger sister revealed that the patient was performing to the nervous level prior to coming in the service and before this nervous breakdown happened. However, diagnosis number 2 was a personality disorder which was not Line of Duty, since a personality disorder is always incurred since childhood. A toxic condition was ruled out by the history supplied by the servicemember and her apparent absence of drug and alcohol abuse. She stated that she was a social drinker who has been drinking since 1940 and that on a few occasions she has taken a sleep pill once a day sporadically for the past 6 months.

RECOMMENDATION: The patient does not meet the retention standards according to AR 40-501, Chapter 3-29. It is, therefore, recommended that the patient be presented to the Physical Evaluation Board for consideration of separation from the service under the provisions of AR 635-86.

ALLORA L. CRISTOBAL, LTC, MC

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| <input type="checkbox"/> HISTORY & PHYSICAL EXAMINATION (SF 501) | <input type="checkbox"/> OPERATION REPORT (SF 502) | NAME MANCHER, ALLISON E. 1LT | |
| <input type="checkbox"/> CONSULTATION SHEET (SF 503) | <input type="checkbox"/> NARRATIVE SUMMARY (SF 504) | REGISTER NO. 678 323 7K | BSN 26 017 00 3092 |
| <input type="checkbox"/> CHRON RECORD OF MEDICAL CARE (SF 600) | <input type="checkbox"/> AUTOPSY PROTOCOL (SF 505) Medical | UNIT A CO 207TH MI | |
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MEDICAL RECORD REPORT

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Veterans Administration

COUNSELING RECORD - NARRATIVE REPORT

| | | |
|--|-----------------------------|---------------------------------|
| FIRST NAME - MIDDLE INITIAL - LAST NAME OF COUNSELOR | CLAIM NUMBER | SOCIAL SECURITY NUMBER |
| Allison E. Ranther | 29 708 311 | 417 84 5098 |
| REGIONAL OFFICE OR CENTER | DATE OF INITIAL APPOINTMENT | NAME OF COUNSELING PSYCHOLOGIST |
| Birmingham, AL | 9-30-85 | James Daily |

PART I - APPRAISAL AND PLANNING

NARRATIVE STATEMENT (Continue on Supplemental Sheet, as necessary)

Veteran reported for counseling on November 26, 1985 as a result of her previous visit on September 30, 1985. Veteran has visited both Livingston State University in Livingston, Alabama and University of Alabama in Tuscaloosa, Alabama and has decided upon attending the University of Alabama.

Veteran was last counseled on 9-30-85. Please refer to counseling record of that date for history, background, medical conditions, and basic determination.

ASSESSMENT OF ABILITIES AMPLITUDE INTEREST:

Testing done on November 26, 1985 revealed the following information:

veteran scored an IQ of 92 on the Otis Lennon Mental Ability Test, this places her in the 31st percentile ranking using grade 12 norms. Let it be noted that veteran completed only 47 items of the required 80 items listed on the Otis Lennon test. However, she answered 36 of the 47 attempted correctly.

College transcript from Knoxville College reveals that veteran graduated with an overall C+ average when she obtained a bachelor of arts degree in commercial art.

Veteran has the ability to train at the college level. As she has done in the past.

VOCATIONAL EXPIRATION:

Occupations in the field of social service, civil service, organizations, and education were explored with veteran. The objective of counselor, rehabilitation was chosen as it is compatible with her disability and suits her interest and ability patterns.

28/JD/vdj

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NARRATIVE STATEMENT (On this and subsequent pages)

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 INDIVIDUAL PLAN DEVELOPMENT:

An individualized written rehabilitation plan was developed with this veteran today. An overall program goal of employment as a rehabilitation counselor was chosen. This objective will be achieved by providing veteran with the preliminary training and then a master's degree in rehabilitation counseling at University of Alabama in Tuscaloosa, Alabama beginning 1-86 and lasting through 12-88.

Vocational rehabilitation services will provide veteran with tuition, books, and supplies. Medical and dental treatment will be provided as necessary. Counseling and guidance will be provided veteran throughout her program of training.

Veteran will be supervised and evaluated by a vocational rehabilitation specialist, Sylvester Coleman. Mr. Coleman will evaluate veteran on attendance and maintaining at least a B average while in graduate school. He will do this by reviewing her grade reports, conferring with school officials, and making personal supervisions on at least a quarterly basis.

Veteran will also be provided employment counseling services which will consist of counseling and job placement through the Alabama Employment Services. At this time prior to her graduating, she will receive a two month post rehabilitation pay.

DATE OF COUNSELING

DATE COUNSELING COMPLETED

95

RECORD ON APPEAL

SA 8

148



Veterans Administration

COUNSELING RECORD - NARRATIVE REPORT

| | | |
|--|-----------------------------|---------------------------------|
| FIRST NAME - MIDDLE INITIAL - LAST NAME OF COUNSELEE | CLAIM NUMBER | SOCIAL SECURITY NUMBER |
| Allison E. Rancher | c- 29 708 311 | 417 84 5098 |
| REGIONAL OFFICE OR CENTER | DATE OF INITIAL APPOINTMENT | NAME OF COUNSELING PSYCHOLOGIST |
| Birmingham, AL | 9-30-85 | James Daily |

PART I - APPRAISAL AND PLANNING

NARRATIVE STATEMENT (Continue on Supplemental Sheet, if necessary)

BASIC ELIGIBILITY DATA:

Veteran reported for counseling on September 30, 1985, requesting training under the Vocational Rehabilitation program. The veteran is not eligible for Chapters 32 and 34. Her eligibility termination date under Chapter 31 expires on 8-1-97. She has 48 months entitlement remaining under Chapter 31.

BACKGROUND:

Veteran is a 28-yr. old single female, who graduated Eufaw High School in Eufaw, AL, in 1975. She then enrolled in Knoxville College in Knoxville, TN, and earned a Bachelor of Arts degree in Commercial Art. She entered service as a second lieutenant through the R.O.C. and served for four years as an operation officer. Since service, she has worked as a manager trainee for Church's Fried Chicken for four months and as a maintenance administration technician for the U.S. Army Reserve for five months. She lost both jobs because of her service connected disability.

MEDICAL CONDITIONS:

The veteran is rated 30% service connected for paranoid schizophrenia, competent. She has functional limitations in working situations that require a variety of duties, fast pace of work, following specific instructions, exacting performance, meeting emergencies, competitive work, and working alone.

BASIC DETERMINATIONS:

Veteran is unemployed and untrained in any suitable occupation. Her military training and experience does not relate to the civilian working population. Limitations to employment currently exist as a result of her service connected condition. The effects of her service connected disability materially hinders her ability to obtain or maintain suitable employment.

In discussing different training situations and training sites with her, veteran decided that she would like to visit both the University of Alabama in Tuscaloosa, AL, and Livingston State University in Livingston, AL, before making any more decisions or undergoing any testing to determine an objective for training.

Counseling was suspended and veteran will be rescheduled in two months for additional counseling.

86

DEPARTMENT OF VETERANS AFFAIRS

RATING DECISION

| | | | | | |
|--|--|--|--|---|--|
| 1. REGIONAL OFFICE NO. 322 | | 2. TYPE OF RATING Disability | | 3. ORIGINAL DISABILITY RATING? No | |
| 4. C FILE NO. C 29 708 311 | | 5. VET'S INITIALS AND SURNAME A. E. MANCHER | | 6. COPY NO. DAV | |
| 7. VET'S SOC SEC NO. 417 04 5090 | | 8. DATE OF CLAIM 7- 7 -91 | | 9. DATE OF THIS RATING 8-29-91 | |
| 10. DATE OF BIRTH 8-16-57 | | 11. DATE OF DEATH | | 12. ACTIVE DUTY (Mo. day, yr.) EOD RAD EOD RAD | |
| 13. ADDL. SERVICE CODE | | 14. COMBAT STATUS 1 | | 15. DATE OF LAST EXAMINATION H/S 7-3 to 8-2-91 | |
| 16. DATE OF FUTURE PHYSICAL EXAMINATION (Mo./yr.) At Once | | 17. EMPLOYABLE (Compensation only) Yes | | 18. COMPETENT Yes | |
| 19. SPECIAL PROVISION CODE | | 20. NO. OF ADDITIONAL DIAGNOSTICS | | 21. NO. OF ADDITIONAL S/C DIAGNOSTICS | |
| 22. SPECIAL MONTHLY COMPENSATION | | | | | |
| A. STATUS CURRENT | | B. BASIC SMC | | C. HOSPITAL SMC | |
| D. LOSS OF USE | | E. ANAT LOSS | | F. OTHER LOSS | |
| FUTURE | | | | | |

23. NARRATIVE

- J. Claim for increase received 7-~~7~~-91 R
- I. Increased evaluation for SC paranoid schizophrenia to include a total evaluation and Paragraph 29 benefits
- E. H/S dated 7-3 to 8-2-91, VAMC Tuscaloosa
- F. The veteran was admitted to the Tuscaloosa VA Medical Center with the chief complaint of problem with boyfriend. She was depressed and unable to sleep at night and indicated auditory hallucinations. She was admitted to the open section of acute psychiatry and prescribed medications. She was referred to mental hygiene clinic for individual therapy. It was noted that the veteran self discloses freely and individual therapy sessions were regarded as productive. C

DEPARTMENT OF VETERANS AFFAIRS

RATING DECISION
CONTINUATION SHEET

FILE NUMBER
C 29 708 311

NAME OF VETERAN
A. E. RANCHER

Page 2 of Rating Dated: 8-29-91

She adjusted well to the unit and was noted to be pleasant and cooperative. Initially, she had a depressed mood and problems with decision making. As the hospital course progressed, she became more verbal and accepting of her mental disorder and her medications were adjusted without difficulty. On mental status examination, her speech was clear with poverty of thought, content and concrete thinking. Her mood was within normal limits and she denied suicidal or homicidal ideation and also destruction of property. She complained of fear of staying home alone or leaving the house and inability to relate to others with feelings of worthlessness. She verbalized some ideas of reference, fears of satanic residuals and her memory was shown to be adequate, but judgment was poor. At the time of discharge, the veteran was not considered dangerous to her self or others and she was competent for VA purposes.

- D. The veteran was hospitalized for treatment in excess of 21 days for her service connected paranoid schizophrenia; therefore, entitlement to Paragraph 29 benefits is established. A decision as to an increased evaluation to include a total evaluation for the service connected paranoid schizophrenia is deferred pending the results of a VA psychiatric examination.

1. SC

9203

PARANOID SCHIZOPHRENIA, COMPETENT
30% FROM 12-1-88
100% FROM 7-3-91 (PARAGRAPH 29)
30% FROM 9-1-91 (PTE PRESUMED)

5299-5257

CHONDROMALACIA PATELLAE, RIGHT
10% FROM 2-8-88 (PTE AGGRAVATED) *Pa*

5299-5257

CHONDROMALACIA, PATELLAE, LEFT
10% FROM 2-8-88 (PTE AGGRAVATED) *R*

8. N.S.C. (PTE)

5299

GENUVARUM (C&D)
43. Bilateral factor of 1.9% added for
diagnostic codes 5299-5257 left and right.

DEPARTMENT OF VETERANS AFFAIRS

| | | |
|---------------------------------------|-----------------------------|----------------------------------|
| RATING DECISION CONTINUATION SHEET | FILE NUMBER C 29 708 311 | NAME OF VETERAN A. E. RANCIER |
|---------------------------------------|-----------------------------|----------------------------------|

Page 3 of Rating Dated: 8-29-91

COMB: SC 50% FROM 12-1-88
100% FROM 7-3-91 (Para. 29)
50% FROM 9-1-91

38. Rating as to a decision as to increased evaluation to include a total evaluation for SC paranoid schizophrenia is deferred pending the results of a VA psychiatric examination.

| | | | |
|---|--|--|----------------|
| 24. MEDICAL RATING SPECIALIST <i>T. S. Boozer</i> T. S. BOOZER, MD CHP.// | 25. RATING SPECIALIST <i>P. C. Mickerson</i> P. C. MICKERSON CHP/R/ | 26. RATING SPECIALIST <i>E. K. Cole</i> E. K. COLE CHP.// | 27. P/A D/V |
| | | 28. R. B. NO 1 | |

VA FORM 21-6796-1
SEP 1986 SU D(8-29-91) T(9-6-91 49970)

RECORD ON APPEAL

SA 12

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SEP 11, 1991

TO: VA Rating Board

211A DISCUSSION
8/28/91

FROM: Mr. Allison E. Rancher, (29-708-311)
620 - Springfield Ave.
Eutaw, AL 35462
(205) 372-2645/9738

I am submitting this information on my behalf to be considered in making a decision to have my disabilities increase.

However, my daily life schedule is consisted of getting up and taking care of my personal hygiene then from that time until bedtime I sit around and become depress and bored, I have nothing constructive to do. I am unemployable and I need additional income to make ends meet. I really need more income for my bills and standard of living.

-1-

120 pending

To: VA Rating Board Sept 11, 1991

And it depressed me when I am unable to pay my bills and have some of the things I once had. I am really unable to work because I become more incompetent each day of my life. I am not using the "skills" that I once had and I am not learning additional skills. I was not approved for Vocational Rehab because of my mental and physical conditions. Dad, when I apply for a job, the employer would say "have you ever been injured on a job" and I tell him "yes" and then he asked "how" and when I say "nervous condition", I never have shown the employer. And if I managed to work on a job because of my lack of competence, I really want to be able to hold a job because of my slowness.

To: VA Rating Board Sept 11, 1991

ability to grasp instructions and my poor ability to concentrate on a given subject and/or matter.

My daily activities are very poor. I spend my days, also thinking about how I can become more useful to myself as well as society as a whole. I also think about how successful my friends are and even my family members and I compare myself to them and I feel very depressed and low in spirit.

I am really a 100% disabled even if I am not presently being compensated for it. I am really miserable about my mental and physical conditions.

I am requesting that the rating board take the above information into consideration in making a decision to have my disabilities rated and/or increased to 100%.

P:VA Bating Brand Sept 11, 1991

Thank You

L. Beverly Jones

William L. Bratcher

SS: 417-84-578

VA CURIA NO: 29-704-311



Date: OCT 7, 1991

Compensation and Pension Status Report
TUSCALOOSA
** FINAL **

Page: 3

For MENTAL DISORDERS

Name: RANCHER, ALANSON ELAINE

SSN: 417045090
C-Number: 29700311
DOB: AUG 16, 1937

Address: 620 SPRINGFIELD AVENUE

City, State, Zip:
EUFORA ALABAMA 35662

Home Phone: 372-2645
Work Phone:

Entered active service: APR 27, 1961
Released active service: FEB 1, 1984

Last ending exam date: JUL 19, 1988

Priority of exam: Increased

Examining physician: DANTE CAMBOA, M.D.
Examined on: SEP 20, 1991

Examination results:

IDENTIFICATION DATA: THIS IS A 33-YEAR-OLD, BLACK, FEMALE, WHO HAS BEEN TREATED FOR SCHIZOPHRENIA SINCE SHE WAS IN THE SERVICE. SHE CAME WITH A CHIEF COMPLAINT OF TO INCREASE HER SERVICE-CONNECTED DISABILITY, WHICH IS 30% AT THE PRESENT TIME FOR SCHIZOPHRENIA, HYPERTHOYD AND 20% FOR HER INJURIES.

THE PATIENT GAVE A HISTORY OF DECOMPLETION WHILE IN THE SERVICE IN 1963. SIGNS AND SYMPTOMS INCLUDE PARANOID DELUSIONS, AUDITORY HALLUCINATION. SHE WAS TREATED FOR ALMOST THREE MONTHS IN AN ARMY HOSPITAL. SHE WAS GIVEN NEUROLEPTIC MEDICATION AND WAS FOLLOWED AS AN OUTPATIENT. TWO MONTHS LATER, AFTER DISCHARGE FROM THE HOSPITAL, SHE WAS GIVEN AN HONORABLE DISCHARGE WITH 30% SERVICE-CONNECTED DISABILITY FOR HER CONDITION.

SHE WAS FIRST TREATED IN THIS HOSPITAL IN 1986 FOLLOWING RECURRENT OF SYMPTOMS DUE TO NO MEDICATIONS TAKEN. SHE WAS PUT ON NEUROLEPTIC MEDICATION AND THIS STABILIZED HER CONDITION. SHE WAS DISCHARGED OPT-SC FROM THE TUSCALOOSA VANC. SHE HAS TWO THREE ADMISSIONS AND THE LAST ONE WAS IN AUGUST OF THIS YEAR. SHE WAS FOLLOWED AS AN OUTPATIENT IN THE MENTAL HYGIENE CLINIC. MEDICATIONS GIVEN WERE CHLORPROMAZINE 150 MG AT BEDTIME, LITHIUM CARBONATE 300 MG THREE TIMES A DAY AND DIPERHYDRAMINE 25 MG CAPSULE TWICE A DAY.

SOCIAL HISTORY: THE PATIENT HAS NEVER BEEN EMPLOYED SINCE HER DISCHARGE FROM THE SERVICE BECAUSE OF HER PSYCHIATRIC CONDITION.

FAMILY HISTORY: ONE BROTHER WAS TREATED FOR SCHIZOPHRENIA. NO OTHER FAMILY MEMBERS HAVE BEEN TREATED FOR A PSYCHIATRIC CONDITION OR ALCOHOL OR DRUG ABUSE.

PAST MEDICAL HISTORY: THE PATIENT IS 20% SERVICE-CONNECTED FOR HEAR PROBLEMS AND 30% SERVICE-CONNECTED FOR HER PSYCHIATRIC ILLNESS BY THE PRESENT TIME. SHE WAS DIAGNOSED TO HAVE DIABETIS MELLITUS THIS YEAR AND WAS PUT ON A DIET. SHE SAID SHE NEVER HAD ANY OPERATIONS OR INJURIES.

Continued on next page

Name: RANCHER, ALLISON ELAINE
For MENTAL DISORDERS Exam

SSN: 417845098

C-number: 29708311

=====
Exam Results Continued

MENTAL STATUS EXAMINATION: THE PATIENT WAS COOPERATIVE DURING THE INTERVIEW. DATA APPEARS TO BE RELIABLE. MOOD AND AFFECT WITHIN NORMAL LIMITS. THERE ARE NO SUICIDAL THOUGHTS OR PLANS. SHE IS ORIENTED TO TIME, PLACE AND PERSON. MEMORY, RECENT AND REMOTE, ARE INTACT. THOUGHT PROCESSES ARE ORGANIZED, RATIONAL AND IN LOGICAL ORDER. THERE ARE NO DELUSIONS OR HALLUCINATIONS. INSIGHT AND JUDGMENT ARE UNIMPAIRED. COMPETENCY STATEMENT: PATIENT IS COMPETENT FOR VA PURPOSES.

IMPRESSION:

1. SCHIZOPHRENIA, PARANOID, CHRONIC.

DISCUSSION: THE PATIENT'S SIGNS AND SYMPTOMS APPEAR TO SUPPORT A CRITERIA FOR SCHIZOPHRENIA, PARANOID, CHRONIC. PRESENT NEUROLEPTIC MEDICATIONS APPEAR TO STABILIZE HER CONDITION. HER ABILITY TO WORK APPEARS TO BE QUESTIONABLE. THERE IS NO SOCIAL IMPAIRMENT AT THE PRESENT TIME.

This exam has been reviewed and approved by the examining physician.

VA Form 2507

RECORD ON APPEAL

SA 19

18

244

Date: OCT 7, 1991

Compensation and Pension Exam Report
TUSCALOOSA
** FINAL **

Page: 2

For JOINTS Exam

Name: RANCHER, ALLISON ELAINE

SSN: 417845098

C-Number: 29700311

DOB: AUG 14, 1957

Address: 620 SPRINGFIELD AVENUE

City, State, Zip:
EUFALA ALABAMA 36542

Home Phone: 372-2645
Work Phone:

Entered active service: APR 27, 1981
Released active service: FEB 1, 1984

Last rating exam date: JUL 19, 1988

Priority of exam: Increase

Examining physician: LORENZA ROYAL, M.D.
Examined on: SEP 20, 1991

Examination results:

REASON FOR EXAMINATION: THE VETERAN PRESENTLY IS RECEIVING COMPENSATION FOR CHONDROMALACIA OF BOTH KNEES; 10% FOR THE RIGHT KNEE AND 10% FOR THE LEFT KNEE. SHE IS SEEKING INCREASE PERCENTAGE OF HER COMPENSATION FOR THIS SAME CONDITION.

MEDICAL HISTORY: THE VETERAN INDICATES THAT SHE SKIPPED AND FELL ON BOTH KNEES IN A ROCK PILE WHILE RUNNING DURING MILITARY DUTY IN THE ARMY IN 1979. THERE WERE NO FRACTURES DIAGNOSED. SHE TOOK MEDICATION FOR SEVERAL MONTHS. SHE INDICATES THAT SHE WAS DOWN ON A PROMILE WHICH CURTAILED HER DUTIES. IN 1981, SHE INDICATES THAT SHE DEVELOPED ARTHRITIS OF BOTH KNEES WHICH REQUIRED MEDICATION ON AN INTERMITTENT BASIS AND WAS EFFECTIVE. SHE RECEIVED AN HONORABLE DISCHARGE FROM THE MILITARY SERVICE ON FEBRUARY 1, 1984.

SUBJECTIVE COMPLAINTS: SHE INDICATES THAT IT FEELS LIKE HER BONES ARE SLIPPING IN HER KNEES WHEN SHE WALKS UP STEPS. NO ACHING PAIN IN BOTH KNEES IS BROUGHT ON BY WALKING UP THE STEPS TO HER TRAILER HOME AND BY WALKING UP HILLS. THE RIGHT KNEE GIVES HER MORE PAIN THAN THE LEFT. IN GENERAL, THE KNEE SYMPTOMS SEEM TO BE ABOUT THE SAME AS THEY WERE ONE YEAR AGO. SHE DENIES HAVING ANY SWELLING OR OTHER BEING COMPLETELY INCAPACITATED BY THE KNEE PAIN. SHE WAS RECENTLY SWITCHED FROM TRYLISATE TO INDOCIN, 50 MG T.I.D. IN JUNE OF 1991 FOR NO APPARENT REASON TO HER KNOWLEDGE. SHE INDICATES THAT BOTH MEDICINES SEEMED TO BE EQUALLY EFFECTIVE IN GIVING HER COMFORT. THE INDOCIN DOES NOT RELIEVE HER ACHING COMPLETELY, HOWEVER. SHE ALSO INDICATES THAT DURING THE PAST YEAR, HER KNEES GAVE AWAY ON THREE DIFFERENT OCCASIONS WHILE WALKING DOWN THE STEPS CAUSING HER TO FALL.

OBJECTIVE COMPLAINTS: BLOOD PRESSURE 130/74, PULSE 68, RESPIRATIONS 20, TEMPERATURE 98.3, WEIGHT 254 LBS. HEIGHT 5'10". THIS EXAMINATION IS CONFINED TO THE KNEES. HER GAIT IS NOTED TO BE NORMAL AS WELL AS HER PACE. RIGHT KNEE: THERE IS NO EVIDENCE OF SURGICAL SCARS, RANGE OF MOTION, THE LOWER ASPECT OF THE KNEE IS SLIGHTLY TENDER MEDIANLY

Continued on next page

Name: RANCHER, ALLISON ELAINE
For JOINTS Exam

SSN: 417845098

C-number: 29708311

Exam Results Continued

AND Laterally to palpation, there is no gross deformity noted. There is full flexion and extension. There is vague discomfort at the maximum range of motion on flexion. There is an initial pop on initiation of flexion and a fine crepitus on extension. The patella is not ballotable which suggest a joint effusion is not present and there is good ligament stability. Left knee: There are no signs of surgical scars, there is no soft tissue swelling, heat or erythema, there is full range of motion, there is slight tenderness inferiorly. Both medially and laterally to palpation, there is no gross deformity. Range of motion is full for flexion and extension. There is fine crepitus on extension inconsistently. The patella is not ballotable suggesting that effusion of the joint is not present. There is good ligament stability. Clinical test: Three view x-rays of each knee were taken and the official report is pending. Urinalysis within normal limits. CBC within normal limits revealing a WBC of 7.3 with a normal differential. Hemoglobin 13.6, Hematocrit 39.8. An 18 panel chemistry profile was also within normal limits except for a PO4 of 1.9. Random glucose was 133.

Diagnoses:
Chondromalacia, both knees

This exam has been reviewed and approved by the examining physician.

VA Form 2507

RECORD ON APPEAL

SA 21

20

246

VA
VETERANS AFFAIRS

474 SOUTH COURT ST
MONTGOMERY AL 36104

83

December 10, 1992

(RO COPY)

IN REPLY REFER TO:

ALLISON E RANCHER
P O BOX 763
EUTAW AL 35462

FILE NUMBER
29-708-311/00
A E RANCH

We have reviewed your claim for disability benefits based on all the evidence we have including:

OUTPATIENT TREATMENT RECORDS OF 11-4-92 AND YOUR STATEMENT.

The evidence does not provide reasons for any change in our previous decision about the following condition(s):

NERVOUS CONDITION
INDIVIDUAL UNEMPLOYABILITY

NO CHANGE IS SHOWN IN YOUR SERVICE CONNECTED NERVOUS CONDITION BASED ON THE OUTPATIENT TREATMENT RECORDS BASED ON THE OUTPATIENT RECORDS SUBMITTED AND THE CONDITION REMAINS 30% DISABLING. THE CONDITION IS NOT SHOWN TO HAVE CONSIDERABLE IMPAIRMENT OF SOCIAL AND INDUSTRIAL ADAPTABILITY TO WARRANT A 50% EVALUATION. ENTITLEMENT TO A TOTAL DISABILITY EVALUATION BASED ON INDIVIDUAL UNEMPLOYABILITY REMAINS DENIED.

J. M. DOWNES
ADJUDICATION OFFICER

1155

IMPORTANT - SEE REVERSE FOR PROCEDURAL AND APPELLATE RIGHTS
KEEP THIS LETTER FOR FUTURE REFERENCE

322

VA FORM
SEP 1992 20-8993

RECORD ON APPEAL
SA 23

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Department of Veterans Affairs

STATEMENT IN SUPPORT OF CLAIM

PRIVACY ACT INFORMATION: The law authorizes us to request the information you are submitting to provide on this form. (33 U.S.C. 2106 (1)) The responses you submit are considered confidential. (33 U.S.C. 3502) They may be disclosed outside the Department of Veterans Affairs (VA) only if the disclosure is authorized by the Privacy Act, including the routine uses identified in the privacy policy, 57VA21/77, Compensation, Pension, Education and Rehabilitation Benefits-VA, published in the Federal Register. The requested information is to be used and revealed and necessary to determine minimum benefits under the law. Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing and reporting the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the VA Clearance Officer (724), 810 Vermont Ave., NW, Washington, DC 20502; and to the Office of Management and Budget, Paperwork Reduction Project (2909-0174) Washington, DC 20503. Do not send requests for benefits to these offices.

| | | |
|---|-------------|--------------|
| FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN (Print or type) | VA FILE NO. | VA PERS. NO. |
| Allison E. Rancher | 427845098 | 6-29708311 |

The following statement is made in connection with a claim for benefits in the case of the above-named veteran.

I request to reopen my claim for an increased evaluation of my service connected nervous disorder. I have reason to believe that the symptomatology of the service connected disorder has worsened.

I request a compensation and pension examination be scheduled to evaluate the current degree of disabling impairment involved.

The basis for this request is current VANC Tuscaloosa, Alabama progress notes that have noted me continuously disabled to the point that it is a definite factor that causes me unemployment.

Consideration is requested for this condition as soon as possible because it appears that it meets the criteria for the next higher rating evaluation.

PROCESSED BY
TARGET
DATE 1-17-93
BY [Signature]

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

| | |
|--|------------------------|
| SIGNATURE <i>Allison E. Rancher</i> | DATE SIGNED 1/17/93 |
| ADDRESS P. O. Box 763 Eutaw, Alabama 35462 | |

PENALTY - The law provides for penalties which include fine or imprisonment, or both, for the willful submission of any statement or collection of a material fact, knowing it to be false.

Send 10

OMB Approved No. 2900-0404
Respondent Burden: 45 Mins.

Department of Veterans Affairs **VETERAN'S APPLIC. ON FOR INCREASED COMPENSATION BASED ON UNEMPLOYABILITY**

NOTE: This is a claim for compensation benefits based on unemployability. When you complete this form you are claiming total disability because of a service-connected disability(ies) which has/have prevented you from securing or following any substantially gainful occupation. Answer all questions fully and accurately.

| | | |
|---|--|------------------------------------|
| 1. VA FILE NUMBER C291708311 | 2. VETERAN'S SOCIAL SECURITY NUMBER 417-84-5098 | 3. DATE OF BIRTH 8-14-57 |
| 4. NAME OF VETERAN (First, Middle, Last) (Type or Print) Allison Elaine Raneher | 5. ADDRESS OF CLAIMANT (No., street or rural route, P.O., city, State and ZIP Code) P.O. Box 763 Eutaw, AL 35462 | |
| 6. TELEPHONE NUMBER OF CLAIMANT (Include Area Code) (205) 372-2657 | | |

SECTION I - DISABILITY AND MEDICAL TREATMENT

| | | |
|---|--|--|
| 7. WHAT SERVICE-CONNECTED DISABILITY PREVENTS YOU FROM SECURING OR FOLLOWING ANY SUBSTANTIALLY GAINFUL OCCUPATION? Schizophrenia / Knee Condition | 8. HAVE YOU BEEN UNDER A DOCTOR'S CARE AND/OR HOSPITALIZED WITHIN THE PAST 12 MONTHS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO | 9. DATES OF TREATMENT BY DOCTOR(S) 6-21-95 9-27-95 4-29-95 7-12-95 |
| 10. NAME AND ADDRESS OF DOCTOR(S) Dr. Kulik VAMC - Tuscaloosa Tuscaloosa, AL 35404 | 11. NAME AND ADDRESS OF HOSPITAL Not hospitalized in past YEAR | 12. DATES OF HOSPITALIZATION None |

SECTION II - EMPLOYMENT STATEMENT

| | | |
|--|---|---|
| 13. DATE YOUR DISABILITY AFFECTED FULL TIME EMPLOYMENT 12/94 | 14. DATE YOU LAST WORKED FULL TIME 2/95 | 15. DATE YOU BECAME TOO DISABLED TO WORK 2/95 |
| 16A. WHAT IS THE MOST YOU EVER EARNED (IN ONE YEAR) \$ | 16B. WHAT YEAR | 16C. OCCUPATION DURING THAT YEAR |

17. LIST ALL YOUR EMPLOYMENT INCLUDING SELF-EMPLOYMENT FOR THE LAST FIVE YEARS YOU WORKED

| A. NAME AND ADDRESS OF EMPLOYER | B. TYPE OF WORK | C. HOURS PER WEEK | D. DATES OF EMPLOYMENT | | E. TIME LOST FROM ILLNESS | F. HIGHEST GROSS EARNINGS PER MONTH |
|---|------------------------------|-------------------|------------------------|-------------|---|---|
| | | | FROM | TO | | |
| Tuscaloosa VA Medical Center Loop Road Tuscaloosa AL 35404 | Interaction CLERK | 40 | 1/95 | 2/95 | Have not worked since 5 months | only worked 2 weeks 575.00 |
| <div style="border: 2px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>FILED MAR 12 1995 TUSCALOOSA, AL</p> </div> | | | | | | |

G. INDICATE YOUR TOTAL EARNED INCOME FOR THE BASED MONTHS - IF CURRENTLY EMPLOYED, INDICATE YOUR CURRENT MONTHLY EARNED INCOME
\$ 575.00

| | | |
|--|---|--|
| 18. DID YOU LEAVE YOUR LAST JOB/SELF-EMPLOYMENT BECAUSE OF YOUR DISABILITY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give the facts in Item 25) | 19. DO YOU RECEIVE/EXPECT TO RECEIVE DISABILITY RETIREMENT BENEFITS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | 20. DO YOU RECEIVE/EXPECT TO RECEIVE WORKERS COMPENSATION BENEFITS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |
| 21. HAVE YOU TRIED TO OBTAIN EMPLOYMENT SINCE YOU BECAME TOO DISABLED TO WORK? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," complete Items A, B, and C) | | |

| A. NAME AND ADDRESS OF EMPLOYER | B. TYPE OF WORK | C. DATE APPLIED |
|--|----------------------|-----------------|
| Tuscaloosa VA Medical Center Loop Road Tuscaloosa, AL 35404 | House Keeping | 3/95 |

SECTION III - SCHOOLING AND TRAINING (Cont)

22. EDUCATION (Circle highest grade completed)

GRADE SCHOOL 1 8 2 4 0 1 2 0 HIGH SCHOOL 1 2 1 COLLEGE 1 2 0 0

23A. DID YOU HAVE ANY OTHER EDUCATION AND TRAINING BEFORE YOU WERE TO BE RECORDED?

YES NO (If "Yes," complete items 23B and 23C)

| 23B. TYPE OF EDUCATION OR TRAINING | 23C. DATES OF TRAINING | |
|---|------------------------|------------|
| | BEGINNING | COMPLETION |
| Vocational Rehabilitation Maryland Supervision | 10/94 | 12/94 |

24A. HAVE YOU HAD ANY EDUCATION AND TRAINING SINCE YOU WERE RECORDED AS DISABLED?

YES NO (If "Yes," complete items 24B and 24C)

| 24B. TYPE OF EDUCATION OR TRAINING | 24C. DATES OF TRAINING | |
|------------------------------------|------------------------|------------|
| | BEGINNING | COMPLETION |
| None | None | None |

25. REMARKS

I have completed the Veterans Vocational Rehabilitation. I was unable to maintain this as an occupation due to my Tusealost. My medication makes me feel slow to act. I was released due to my inability to perform in a speedy manner.

SECTION IV - AUTHORIZATION, CERTIFICATION, AND SIGNATURE

AUTHORIZATION FOR RELEASE OF INFORMATION: I authorize the release of my service record, including the release of my name, address, and other information, to the Department of Veterans Affairs for the purpose of processing my claim for VA benefits. I understand that I will receive a copy of my service record and that I will be notified of any changes to my information.

CERTIFICATION OF STATEMENT: I certify that the information provided in this application is true and complete to the best of my knowledge and belief, and that I understand that the information provided will be used to determine my eligibility for VA benefits based on my disability.

I UNDERSTAND THAT IF I AM GRANTED SERVICE-CONNECTED TOTAL DISABILITY BENEFITS BASED ON MY UNEMPLOYMENT, I MUST IMMEDIATELY INFORM VA IF I RETURN TO WORK. I ALSO UNDERSTAND THAT TOTAL DISABILITY BENEFITS PAID TO ME AS A RESULT OF MY UNEMPLOYMENT MAY BE CONSIDERED AN OVERPAYMENT BY THE VA DEPARTMENT.

26A. DATE SIGNED: 7-12-95

26B. SIGNATURE OF CLAIMANT: Allison E. Runcher

WITNESS TO SIGNATURE OF CLAIMANT: I, the undersigned, do hereby certify that the signature of the claimant is true and correct, and that I am a duly qualified witness.

| | |
|--------------------------------|------------------------------|
| 27A. SIGNATURE OF WITNESS: N/A | 27B. ADDRESS OF WITNESS: N/A |
| 28A. SIGNATURE OF WITNESS: N/A | 28B. ADDRESS OF WITNESS: N/A |

REMARKS: This has been provided under the provisions of the Privacy Act, 5 U.S.C. 552a, and the information is being provided to the VA for the purpose of processing your claim for VA benefits.

PRIVACY ACT NOTICE: The information you submit on this form is considered confidential. It may be disclosed to VA or other federal agencies for the purpose of processing your claim for VA benefits. You may request a copy of this notice by contacting the VA Office of Management and Enterprise Services, 810 Vermont Ave., NW, Washington, DC 20590.

RESPONSIBILITY BURDEN: Public reporting burden for this collection of information is estimated to average 45 minutes per response, including reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the VA Clearance Officer (720), 810 Vermont Ave., NW, Washington, DC 20590, and to the Office of Management and Enterprise Services, 810 Vermont Ave., NW, Washington, DC 20590. Do NOT send responses to this collection of information to the VA Office of Management and Enterprise Services, 810 Vermont Ave., NW, Washington, DC 20590.

te: OCT 31,1995

Compensation and Pension Exam Report

Page: 1

Birmingham, Alabama

** REPRINT OF FINAL **

Processing time: 55

For MENTAL DISORDERS Exam

Name: RANCHER, ALLISON E.

SSN: 417 84 5098 (R5098)

C-Number: 29708311

DOB: 1957

Address: P O BOX 763

City, State, Zip+4:

EUTAW ALABAMA 35462

Res Phone: (205) 372-2557

Bus Phone:

Entered active service: APR 27, 1981

Last rating exam date:

Released active service: FEB 1, 1984

Priority of exam: Increase

Examining provider: CEZAYIRLI

Examined on: OCT 20, 1995

Examination results:

Physician's Guide Reference:

NARRATIVE: The veteran is a thirty-eight year old black female who served in the Army between 1980 and 1984. She is applying for unemployability rating due to her nerves. She has at the present 60% service connected disability which is 50% for her nerves and 10% for her knees.

MEDICAL HISTORY: The patient states she had a knee injury while she was in the ROTC in 1979 and she developed diabetes in 1989 and hepatitis in 1989.

PRE-MILITARY HISTORY: She was on ROTC in 1979 and 1980. She finished high school in 1975. She had a BA Degree in Arts, AAS Applied Social Studies and she worked two and a half years in a restaurant as a shift manager. She then volunteered for the Army.

MILITARY HISTORY: Since she had ROTC basic training, she was sent to advanced training in Seattle, Washington for six weeks. Officer basic school, maintenance management for eight months in Netherlands and she entered active duty at Fort Ord, California as executive officer, data officer and platoon leader. In 1983, she got sick and was admitted to hospital in San Francisco Army Hospital for three months. She was treated with medication. She went back to the Army and she was in a car with a fellow woman officer, she jumped out of the car because she was afraid this woman was going to harm her. She was taken back to the hospital. She was discharged on honorable discharge in 2/84.

POST-MILITARY HISTORY: She came back home to Eutaw, Alabama. She worked as maintenance administrative technician at the Army Reserve in Anniston for five to six months. She got sick and she was sent to Tuscaloosa VA Medical Center for four months in 1985. Since then she has been hospitalized three

Name: RANCHER, ALLISON E.
For MENTAL DISORDERS Exam

SSN: 417845007

C-number: 29700311

Exam Results Continued

times. She tries to work and is unable to function. The last work was in the Tuscaloosa VA as a clerk but this lasted only two weeks and they let her go.

SUBJECTIVE FINDINGS: She describes she becomes fearful that people are going to hurt her. She hears voices that are accusing her that she got sick in the military. She was apparently promoted to captain but got sick and they did not give her and this bothered her very much and still has dreams about it. She has unusual wild thoughts such as when she sees an open window she is scared that something is going to happen and she feels danger. She denies any wish of jumping out. She has auditory hallucinations accusing her that she could not do the Army. She denies any visual hallucinations. She even with her own relatives has this paranoid thinking. She has never been violent but she gets angry. She describes short manic attacks when she feels happy, she talks a lot, she does not require much sleep and she buys things. She is single. She has dated a guy and lived together for two years in 1990 but he recently married somebody else. She lives alone. Her parents are close by. She has two sisters and three brothers. One brother was diagnosed as having schizophrenia. She feels very obese and she stays home and she sleeps a lot.

OBJECTIVE FINDINGS: This is a well-developed, obese lady. Her mood is not depressed, animated. She has good eye contact. Alert and cooperative. She laughs properly according to subject. She admits she feels depressed when she sees her friends are all married and having family with sad feeling. She has never been suicidal, she says "she wants to live". When she gets angry she calls a friend and talks to a friend that this makes her feel good. Her memory is well preserved and is able to give dates and fairly intelligent. Insight and judgement are pretty good. This patient tried on many occasions to work and could not function. She is competent to handle her financial affairs.

DIAGNOSIS:

1. Schizoaffective disorder (mixed episodes).

DD: 10-20-95

DT: 10-23-95 TGM

This exam has been reviewed and approved by the examining physician.

RECORD ON APPEAL

SA 28

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346

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|----------------------------------|------------------------------|--|----------------------------------|--------------------|
| Rating Decision | | Department of Veterans Affairs Columbia Regional Office | | Page 1 04/20/86 |
| NAME OF VETERAN A. E. RANCHER | VA FILE NUMBER 29 708 311 | SOCIAL SECURITY NR 417-84-5098 | PCA Ala. Dept of Vet. Affairs | |

ISSUE:

Entitlement to individual unemployability.

EVIDENCE:

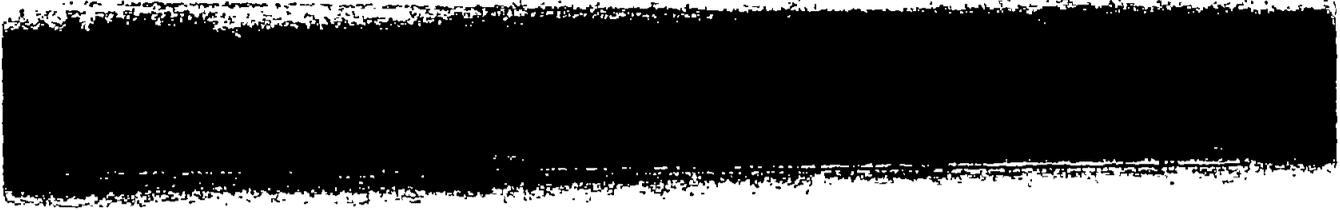
VA examination dated 9-14-95, VAMC, Birmingham
Report from T. McNutt, PhD., 7-27-95
Outpatient treatment reports from 7-12-95, VAMC, Tuscaloosa

DECISION:

Entitlement to individual unemployability is denied.

REASONS AND BASES:

Entitlement to individual unemployability is denied because the claimant has not been found unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities. Service-connected disabilities currently evaluated as 60 percent do not meet the schedular requirements for entitlement to individual unemployability. 38 CFR 4.16 provides that individual unemployability may be granted where there is one disability evaluated as 60 percent disabling, or two or more disabilities, one of which is 40 percent with a combined evaluation of 70 percent or more. These percentage standards are set aside only in exceptional cases where there is an unusual factor of disability rendering the veteran unable to secure or follow a substantially gainful occupation. Such cases are submitted to the Director of the Compensation and Pension Service for extra-schedular consideration. This case has not been submitted for extra-schedular consideration because there are no exceptional factors or circumstances associated with the veteran's disablement. The 38 year old veteran has a Bachelors degree. Her nervous condition is under good control. She is not depressed and is, in fact, animated. She was alert and cooperative. Memory is preserved and insight and judgement are good. Although there is mild limitation of motion of the knees, they are not shown to be significantly, there is no instability and they are not shown to be significantly limiting.



| ACTIVE DUTY (Months/Days/Years) | | | | ADDITIONAL SERVICE CODE | COMMAND | OFFICIAL PROVISION CODE | UNIFORMED SERVICES (Months/Year) |
|---------------------------------|-----|-----|-----|-------------------------|---------|-------------------------|----------------------------------|
| EOD | RAD | EOD | RAD | | | | None |
| COPY TO: | | | | EFFECTIVE DATE | DATE | HOSPITAL | LOSS OF USE |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

JURISDICTION: Claim for increase received 7-13-95

R. Bado Rating Specialist

CHER3111.RTG

RECORD ON APPEAL

SA 30

29
349



Disabled American Veterans National Service Office

DVA Regional Office • 345 Perry Hill Rd. • Montgomery, AL 36109-3798
(334) 213-3365



MEMORANDUM

TO: DVA/Adjudication Division/HGT
DATE: May 23, 1996
RE: Allison E. Rancher C 29 708 311
P. O. Box 763
Eutaw, AL 35462

Ladies/Gentlemen:

Please let this serve as a notice of disagreement with your rating decision of April 23, 1996, which denied the above named veteran a total evaluation based on individual unemployability.

After our review of the veteran's VA claims file, it is our belief that the evidence of record supports the veteran being totally disabled due to her service connected nervous condition, and feel that she should have been rated accordingly.

To the reference of this claim, we are requesting a hearing before the local hearing officer so that we may further our contentions and arguments at that time. Please notify the veteran as well as this office as soon as a hearing is scheduled.

Your immediate attention to this matter would be greatly appreciated.

Sincerely,

Thomas E. Tucker
National Service Officer

TET:rh

cc: Ms. Allison E. Rancher

NOTICE OF DISAGREEMENT RECEIVED

6/10/96

DATE



VM
**Disabled American Veterans
National Service Office**

VA Regional Office • 345 Perry Hill Rd. • Montgomery, AL 36108-5788
(334) 213-3365



MEMORANDUM

TO: Customer Service Division/21T1

DATE: September 29, 1999

RE: RANCHER, Allison
C 29 708 311

*170 pending
DCA 8-25-99*

Ladies/Gentlemen:

The above named veteran has contacted this office and wishes to file a notice of disagreement with your rating decision of August 24, 1998, which awarded her 100 percent evaluation for schizophrenia. The veteran disagrees with the effective date assigned for the 100 percent evaluation. The veteran feels that the 100 percent evaluation should be retroactive to July 1995, the date that she filed for 100 percent evaluation based on individual unemployability.

Based on our review of the evidence of record, we agree with the veteran and feel that an earlier effective date is warranted. We ask that you issue the veteran as well as this office a Statement of the Case so that we may continue the appellate process.

Your immediate attention to this matter would be gratefully appreciated.

Sincerely,

Thomas H. Tucker
National Service Officer

TET:m

cc: Ms. Allison Rancher
P.O. Box 783
Eutaw, AL 35462

| | |
|---------------------------------|---------|
| NOTICE OF DISAGREEMENT RECEIVED | |
| <i>[Signature]</i> | 7/29/99 |
| SIGNATURE | DATE |

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|--------------------------------------|------------------------------|--|-----------------------------------|--------------------|
| Statement of the Case | | <i>Department of Veterans Affairs Montgomery Regional Office</i> | | Page 1 10/06/99 |
| NAME OF VETERAN ALLISON E RANCHER | VA FILE NUMBER 29 708 311 | SOCIAL SECURITY NR 417-84-5098 | POA Disabled American Veterans | |

ISSUE:

Entitlement to an earlier effective date for the increased evaluation of paranoid schizophrenia.

EVIDENCE:

VA examination dated May 10, 1999, from the VA Medical Center, Birmingham.

Letter from the power of attorney dated September 29, 1999.

ADJUDICATIVE ACTIONS:

Military Service: 04-27-81 to 02-01-84 Honorable

05-10-99 VA examination conducted VA Medical Center, Tuscaloosa.

07-22-99 Outpatient treatment records from the VA Medical Center, Tuscaloosa from October 25, 1995, to May 27, 1999.

08-16-99 Claim was considered and a total schedular evaluation was granted from the date of the VA examination.

08-23-99 Veteran was notified by letter of the increased evaluation.

09-30-99 A notice of disagreement was received from the veteran power of attorney.

PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol "§" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits.

38 USC Section 5107. Burden of proof; benefit of the doubt

(a) Except when otherwise provided by the Secretary in accordance with the provisions of this title, a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Secretary shall assist such a claimant in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 5106 of this title.

§3.400 General.

Statement of the CaseDepartment of Veterans Affairs
Montgomery Regional OfficePage 2
10/03/88NAME OF VETERAN
ALLISON E RANCHERVA FILE NUMBER
29 708 311CODAL IDENT. NO.
417-86-8093POB
Disabled American Veterans

Except as otherwise provided, the effective date of an evaluation award of pension, compensation or dependency and indemnity 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. (Authority: 38 U.S.C. 5110(a))

(a) Unless specifically provided. On basis of facts found.

(b) Disability benefits:

(1) Disability pension (§3.3(c)). An award of disability pension may not be effective prior to the date entitlement arose.

(i) Claims received prior to October 1, 1984. Date of receipt of claim or date on which the veteran became permanently and totally disabled, if claim is filed within one year from such date, whichever is to the advantage of the veteran.

(ii) Claims received on or after October 1, 1984.

(A) Except as provided in paragraph (b)(1)(i)(B) of this section, date of receipt of claim.

(B) If, within one year from the date on which the veteran became permanently and totally disabled, the veteran files a claim for a retroactive award and establishes that a physical or mental disability, which was not the result of the veteran's own willful misconduct, was so incapacitating that it prevented him or her from filing a disability pension claim for at least the first 30 days immediately following the date on which the veteran became permanently and totally disabled, the disability pension award may be effective from the date of receipt of claim or the date on which the veteran became permanently and totally disabled, whichever is to the advantage of the veteran. While rating board judgment must be applied to the facts and circumstances of each case, extensive hospitalization will generally qualify as sufficiently incapacitating to have prevented the filing of a claim. For the purposes of this subparagraph, the presumptive provisions of §3.342(a) do not apply.

(2) Disability compensation:

(i) Direct service connection (§3.4(b)). Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

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|--------------------------------------|------------------------------|--|-----------------------------------|--------------------|
| Statement of the Case | | Department of Veterans Affairs Montgomery Regional Office | | Page 3 10/06/98 |
| NAME OF VETERAN ALLISON E RANCHER | VA FILE NUMBER 29 708 311 | SOCIAL SECURITY NR 417-84-5098 | POA Disabled American Veterans | |

(ii) Presumptive service connection (§§3.307, 3.308, 3.309). Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. Where the requirements for service connection are met during service, the effective date will be the day following separation from service if there was continuous active service following the period of service on which the presumption is based and a claim is received within 1 year after separation from active duty.

(c) Death benefits:

(1) Death in service (38 U.S.C. 5110(j), Pub. L. 87-825) (§§3.4(c), 3.5(b)). First day of the month fixed by the Secretary concerned as the date of actual or presumed death, if claim is received within 1 year after the date the initial report of actual death or finding of presumed death was made; however benefits based on a report of actual death are not payable for any period for which the claimant has received, or is entitled to receive an allowance, allotment, or service pay of the veteran.

(2) Service-connected death after separation from service (38 U.S.C. 5110(d), Pub. L. 87-825) (§§3.4(c), 3.5(b)). First day of the month in which the veteran's death occurred if claim is received within 1 year after the date of death; otherwise, date of receipt of claim.

(3) Nonservice-connected death after separation from service.

(i) For awards based on claims received prior to October 1, 1984, first day of the month in which the veteran's death occurred if claim is received within one year after the date of death; otherwise, date of receipt of claim.

(ii) For awards based on claims received on or after October 1, 1984, first day of the month in which the veteran's death occurred if claim is received within 45 days after the date of death; otherwise, date of receipt of claim. (Authority: 38 U.S.C. 5110(d))

(4) Dependency and indemnity compensation:

(i) Deaths prior to January 1, 1957 (§3.702). Date of receipt of election.

(ii) Child (38 U.S.C. 5110(e), Pub. L. 87-835). First day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.

(iii) Deaths on or after May 1, 1957 (in-service waiver cases) (§§3.5(b)(3) and 3.702). Date of receipt of election. (See §3.114(a)).

(d) [Removed]

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| Statement of the Case | | <i>Department of Veterans Affairs</i> <i>Memphis Regional Office</i> | | Page 6 10/05/00 |
| NAME OF VETERAN ALLISON E RANCHER | VA FILE NUMBER 29 708 311 | CODAL IDENTIFIER 417-04-5011 | FOIA Disabled American Veterans | |

(e) Apportionment (§§3.450 through 3.461, 3.551, 3.557). On original claims, in accordance with the facts found. On other than original claims from the first day of the month following the month in which:

(1) Claim is received for apportionment of a veteran's award, except that where payments to him (her) have been interrupted, apportionment will be effective the day following date of last payment if a claim for apportionment is received within 1 year after that date;

(2) Notice is received that a child included in the surviving spouse's award is not in the surviving spouse's custody, except that where payments to the surviving spouse have been interrupted, apportionment will be effective the day following date of last payment if such notice is received within 1 year after that date.

(f) Federal employees' compensation cases (§3.708). Date authorized by applicable law, subject to any payments made by the Office of Workers' Compensation Programs under the Federal Employees' Compensation Act over the same period of time.

(g) Correction of military records (38 U.S.C. 5110(i); Pub. L. 87-125). Where entitlement is established because of the correction, change or modification of a military record, or of a discharge or dismissal, by a Board established under 10 U.S.C. 1552 or 1553, or because of other corrective action by competent military, naval, or air authority, the award will be effective from the latest of these dates:

(1) Date application for change, correction, or modification was filed with the service department, in either an original or a disallowed claim;

(2) Date of receipt of claim if claim was disallowed; or

(3) One year prior to date of reopening of disallowed claim.

(h) Difference of opinion (§3.105).

(1) As to decisions not final prior to receipt of an application for reconsideration or to reopen, or prior to reconsideration on Department of Veterans Affairs initiative, the date from which benefits would have been payable if the former decision had been favorable.

(2) As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) prior to receipt of an application for reconsideration or to reopen, the date of receipt of such application or the date entitlement arose, whichever is later.

(3) As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) and reconsideration is undertaken solely on Department of Veterans Affairs initiative, the date of Central Office approval authorizing a favorable decision or the date of the favorable Board of Veterans Appeals decision.

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|--------------------------------------|------------------------------|--|-----------------------------------|--------------------|
| Statement of the Case | | <i>Department of Veterans Affairs</i> <i>Montgomery Regional Office</i> | | Page 5 10/06/99 |
| NAME OF VETERAN ALLISON E RANCHER | VA FILE NUMBER 29 708 311 | SOCIAL SECURITY NR 417-84-5098 | POA Disabled American Veterans | |

(4) Where the initial determination for the purpose of death benefits is favorable, the commencing date will be determined without regard to the fact that the action may reverse, on a difference of opinion, an unfavorable decision for disability purposes by an adjudicative agency other than the Board of Veterans Appeals, which was in effect at the date of the veteran's death.

(i) Disability or death due to hospitalization etc. (38 U.S.C. 5110(c), (d); Pub. L. 87-825; §3.800):

(1) Disability. Date injury or aggravation was suffered if claim is received within 1 year after that date; otherwise, date of receipt of claim.

(2) Death. First day of month in which the veteran's death occurred if a claim is received within 1 year following the date of death; otherwise, date of receipt of claim.

(j) Election of Department of Veterans Affairs benefits (§3.700 series).

(1) Unless otherwise provided, the date of receipt of election, subject to prior payments.

(2) July 1, 1960, as to pension payable under Pub. L. 86-211, where pension is payable for June 30, 1960, under the law in effect on that date, including an award approved after that date, if the election is filed within (generally) 120 days from date of notice of the award. The award will be subject to prior payments over the same period of time.

(3) January 1, 1965, as to pension payable under Pub. L. 86-211 (73 Stat. 432) as amended by Pub. L. 88-664 if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election if filed prior to May 1, 1965.

(4) January 1, 1965, as to pension payable under Pub. L. 86-211 (73 Stat. 432) as amended by Pub. L. 88-664 if there was basic eligibility on that date for pension on the basis of service in the Indian wars or Spanish-American War and an election is filed prior to May 1, 1965.

(5) January 1, 1969, as to pension payable under Pub. L. 86-211 (73 Stat. 432), as amended by Pub. L. 90-275 (82 Stat. 64), if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election is filed prior to May 1, 1969.

(6) August 1, 1972, as to pension payable under Pub. L. 86-211 (73 Stat. 432) as amended by Pub. L. 92-328 (86 Stat. 393) if there was basic eligibility on that date based on death of a veteran of the Spanish-American War and an election is filed prior to December 1, 1972.

(k) Error (§3.105). Date from which benefits would have been payable if the corrected decision had been made on the date of the reversed decision.

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| Statement of the Case | | <i>Department of Veterans Affairs</i> <i>Memorandum Regional Office</i> | | Page 6 10/03/88 |
| NAME OF VETERAN ALLISON E RANCHER | VA FILE NUMBER 29 708 311 | CODAL CONTROL NUMBER 617-84-0003 | FOIA Disabled American Veterans | |

(l) Foreign residence. (See §3.653).

(m) Forfeiture (§§3.901, 3.902). Day following date of last payment on award to payee who forfeited.

(n) Guardian. Day following date of last payment to prior payee or beneficiary.

Note: Award to guardian shall include amounts withheld for possible apportionments as well as money in Personal Funds of Patients.

(o) Increases (38 U.S.C. 5110(a) and 5110(b)(2), Pub. L. 94-73, 49 Stat. 395; §§3.109, 3.156, 3.157):

(1) General. Except as provided in paragraph (o)(2) of this section and §3.401(b), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection.

(2) Disability compensation. 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.

(p) Liberalizing laws and Department of Veterans Affairs issued. See §3.114.

(q) New and material evidence (§3.156):

(1) Other than service department records:

(i) Received within appeal period or prior to appellate decision. The effective date will be as though the former decision had not been rendered. See §§20.1103, 20.1104 and 20.1304(b)(1) of this chapter.

(ii) Received after final disallowance. Date of receipt of new claim or date entitlement arose, whichever is later.

(2) Service department records. To agree with evaluation (since it is considered these records were lost or mislaid) or date of receipt of claim on which prior evaluation was made whichever is later, subject to rules on original claims filed within 1 year after separation from service. See paragraph (g) of this section as to correction of military records.

(r) Reopened claims. (§§3.109, 3.156, 3.157, 3.160(e)) Date of receipt of claim or date entitlement arose, whichever is later, except as provided in §20.1304(c)(1) of this chapter. (Authority: 38 U.S.C. 501(a))

(s) Renouncement (§3.105). Except as provided in §3.106(c), date of receipt of new claim.

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|--------------------------------------|------------------------------|--|-----------------------------------|--------------------|
| Statement of the Case | | <i>Department of Veterans Affairs Montgomery Regional Office</i> | | Page 7 10/06/99 |
| NAME OF VETERAN ALLISON E RANCHER | VA FILE NUMBER 29 708 311 | SOCIAL SECURITY NR 417-84-5098 | POA Disabled American Veterans | |

(t) Whereabouts now known. (See §3.158(c).)

(u) Void, annulled or terminated marriage of a child (38 U.S.C. 5110(a), (k), (l); Pub. L. 93-527, 88 Stat. 1702; §3.55):

(1) Void. Date the parties ceased to cohabit or date of receipt of claim, whichever is later.

(2) Annulled. Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(3) Death. Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of §3.55(b) of this part are met. (Authority: 38 U.S.C. 103)

(4) Divorce. Date the decree became final if claim is filed within 1 year of that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of §3.55(b) of this part are met. (Authority: 38 U.S.C. 103)

(v) Termination of remarriage of surviving spouse (38 U.S.C. 5110(a), (k); 38 U.S.C. 103(d) and 5110(l) effective January 1, 1971; §3.55):

(1) Void. Date the parties ceased to cohabit or date of receipt of claim whichever is the later.

(2) Annulled. Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(3) Death. Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of §3.55(a) of this part are met. (Authority: 38 U.S.C. 103)

(4) Divorce. Date the decree became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of §3.55(a) of this part are met. (Authority: 38 U.S.C. 103)

(w) Termination of relationship or conduct resulting in restriction on payment of benefits (38 U.S.C. 5110(m), effective January 1, 1971; §§3.50(b)(2) and 3.55). Date of receipt of application filed after termination of relationship and after December 31, 1970. Benefits are not payable unless the provisions of §3.55(a), as applicable, of this part are met. (Authority: 38 U.S.C. 103)

Statement of the CaseDepartment of Veterans Affairs
Montgomery Regional OfficePage 0
10/03/00

NAME OF VETERAN

ALLISON E RANCHER

VA FILE NUMBER

29 708 311

LOCAL IDENTIFIER

017-84-5654

FOIA

Disabled American Veterans

(x) Effective date of determination of incompetency (§3.353). Date of rating of incompetency. (Not applicable to an incompetency determination made for insurance purposes under 38 U.S.C. 1922).

(y) Effective date of determination restoring competency (§3.353). Date shown by evidence of record that competency was regained.

(z) Claims based on service in the Women's Air Forces Service Pilots (WASP), or on service in a similarly situated group (Pub. L. 95-202).

(1) Original claim: Date of receipt of claim or date entitlement arose, whichever is later, or as otherwise provided under this section (e.g., paragraph (b)(1) of this section) except that no benefits shall be awarded for any period prior to November 23, 1977.

(2) Reopened claim: Latest of the following dates:

(i) November 23, 1977.

(ii) Date entitlement arose.

(iii) One year prior to date of receipt of reopened claim.

§3.401 Veterans.

Awards of pension or compensation payable to or for a veteran will be effective as follows:

(a) Aid and attendance and housebound benefits.

(1) Except as provided in §3.400(o)(2), the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of pension or compensation based on an original or reopened claim is effective for a period prior to the date of receipt of the claim, any additional pension or compensation payable by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established. (Authority: 38 U.S.C. 501(a); 5110(b)(1), (3))

(2) Date of departure from hospital, institution, or domiciliary. (Authority: 38 U.S.C. 501(a))

(3) Spouse, additional compensation for aid and attendance: Date of receipt of claim or date entitlement arose, whichever is later. However, when an award of disability compensation based on an original or reopened claim is effective for a period prior to date of receipt of the claim additional disability compensation payable to a veteran by reason of the veteran's spouse's need for aid and attendance shall also

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be awarded for any part of the award's retroactive period for which the spouse's entitlement to aid and attendance is established. (Authority: 38 U.S.C. 501(a); 5110(b)(1), (2))

(b) Dependent, additional compensation or pension for. Latest of the following dates:

(1) Date of claim. This term means the following, listed in their order of applicability:

(i) Date of veteran's marriage, or birth of his or her child, or, adoption of a child, if the evidence of the event is received within 1 year of the event otherwise.

(ii) Date notice is received of the dependent's existence, if evidence is received within 1 year of the Department of Veterans Affairs request.

(2) Date dependency arises.

(3) Effective date of the qualifying disability rating provided evidence of dependency is received within 1 year of notification of such rating action. (Authority: 38 U.S.C. 5110(f))

(4) Date of commencement of veteran's award. (Other increases, see §3.400(o). For school attendance see §3.667.) (Authority: 38 U.S.C. 5110 (f), (n))

(c) Divorce of veteran and spouse. See §3.501(d).

(d) Institutional awards (§3.852):

(1) Chief officer of non-Department of Veterans Affairs hospital or institution. From first day of month in which award is approved or day following date of last payment to veteran, whichever is later.

Note: If apportionment under §§3.452(c) and 3.454 is in order or payment under §3.850(a), Personal Funds of Patients account will not be set up but difference withheld for dependents.

(2) Director of a Department of Veterans Affairs medical center or domiciliary. From day following date of last payment to veteran where veteran previously received payments. On initial or resumed payments from date of entitlement to benefits subject to any amounts payable to or withheld for apportionments for dependents.

(e) Retirement pay (§3.750):

(1) Election. Date of entitlement if timely filed. Subject to prior payments of retirement pay.

(2) Waiver. Day following date of discontinuance or reduction of retirement pay.

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(3) Reelection. Day the reelection is received by the Department of Veterans Affairs.

(f) Service pension (§3.3(a)). Date of receipt of claim.

(g) Tuberculosis, special compensation for arrested. As of the date the graduated evaluation of the disability or compensation for that degree of disablement combined with other service-connected disabilities would provide compensation payable at a rate less than \$67. See §3.350(f).

(h) Temporary increase "General Policy in Rating," 1945 Schedule for Rating Disabilities:

(1) Section 4.29 of this chapter. Date of entrance into hospital, after 21 days of continuous hospitalization for treatment.

(2) Section 4.30 of this chapter. Date of entrance into hospital, after discharge from hospitalization (regular or release to non-bed care).

(i) Increased disability pension based on attainment of age 78. First day of the month during which veteran attains age 78.

DECISION:

Entitlement to an earlier effective date for the increased evaluation of paranoid schizophrenia is denied.

REASONS AND BASIS:

A review of the claims folder shows that the total evaluation was granted from the date of the VA examination on May 10, 1999. This was the first evidence received showing that the severity of the condition had increased to warrant a total evaluation. Entitlement to an earlier effective date than the VA examination is denied.

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PREPARED BY: *JR Taylor*
J R TAYLOR

APPROVED BY: *[Signature]*
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| Supplemental Statement of the Case | | <i>Department of Veterans Affairs Montgomery Regional Office</i> | | Page 1 07/08/2000 |
| NAME OF VETERAN ALLISON E RANCHER | VA FILE NUMBER 29 708 311 | SOCIAL SECURITY # 417-84-5023 | DCA Disabled American Veterans | |

ISSUE:

Entitlement to individual unemployability.

EVIDENCE:

The medical records from the Social Security Administration received June 30, 2000.
Duplicate copies treatment records from November 4, 1992, to March 24, 1999.
Outpatient treatment reports dated July 8, 1999.

ADJUDICATIVE ACTIONS:

- 06-23-00 Treatment records were received most of which were duplicates of evidence previously considered.
- 06-30-00 Social Security Administration medical records received.
- 07-08-00 Claim for individual unemployability was reconsidered and the prior decision denying entitlement was confirmed and continued.

DECISION:

Entitlement to individual unemployability is denied.

REASONS AND BASES:

Entitlement to individual unemployability is denied because the claimant has not been found unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities. Service-connected disabilities currently evaluated as 50 percent do not meet the schedular requirements for entitlement to individual unemployability. 38 CFR 4.16 provides that individual unemployability may be granted where there is one disability evaluated as 60 percent disabling, or two or more disabilities, one of which is 40 percent with a combined evaluation of 70 percent or more. These percentage standards are set aside only in exceptional cases where there is an unusual factor of disability rendering the veteran unable to secure or follow a substantially gainful occupation. Such cases are submitted to the Director of the Compensation and Pension Service for extra-schedular consideration. This case has not been submitted for extra-schedular consideration because there are no exceptional factors or circumstances associated with the veteran's disablement. Entitlement to a total evaluation due to being unemployable remains denied from July 13, 1995 to the grant of the schedular 100 percent on May 10, 1999, when it became a mute point. The evidence does not show that the schedular requirements are met. The social security report did provide evidence that a

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change was warranted. The outpatient treatment records were a duplicate of evidence considered except for the report of July 1999 which confirmed the 100 percent evaluation granted May 10, 1999. The evidence received does not show that a increase in the combined degree is warranted from July 13, 1995, which might meet the requirement for individual unemployability. The prior decision denying entitlement to individual unemployability is confirmed and continued.

PREPARED BY: *JR Taylor*
JR TAYLOR

APPROVED BY: *Dianne Dennis*
DIANNE DENNIS

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RECORD ON APPEAL

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APPELLANT'S BRIEF

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

02-1142

VA File C 29 708 311

Allison E. Rancher,

Appellant,

v.

ANTHONY J. PRINCIPAL,
Secretary, Dept. of Veterans Affairs,

Appellee.

John P. Cameron, Esq.
P.O. Box 240666
Montgomery, AL 36124
(334) 822-9500

ATTORNEY FOR
APPELLANT
Allison E. Rancher

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III. STATEMENT OF THE ISSUES

- I. The Board's assignment of an effective date was clearly erroneous and therefore due to be reversed.
- II. The Secretary improperly failed to state adequate reasons and bases for its conclusion that the Appellant was not entitled to an earlier effective date before December 11, 1996, for her granted application for 100% schedular benefits for schizophrenia
- III. The Secretary failed to apply the VCAA to the Appellant's claims.

IV. STATEMENT OF THE CASE

Ms. Allison Rancher (hereinafter, "Appellant" or "Veteran") served honorably in the U.S. Army from September 1980 until February 1, 1984 (Record [R] at 2, 133).

Ms. Rancher filed her first claim on January 31, 1985 to establish service connection for her schizophrenia (received by VARO on February 1, 1985) (R. at 133-36).

An August 1, 1985 Regional Office decision granted Ms. Rancher service connection for her Schizophrenia (R. 142-45). The Regional Office decision awarded her a temporary 100% rating from January 29, 1985 until March 31, 1995, based on her hospitalization for paranoid schizophrenia at the Tuscaloosa, Alabama Veterans Affairs Medical Center (VAMC) from January 29, 1985 until March 20, 1985 (R. 138-40). In the VAMC Discharge

Summary, the treating physician stated, "She is unable to engage in stressful employment at this time." The August 1, 1985 Regional Office decision also granted her a 30% rating for her service-connected schizophrenia from April 1, 1985 (R. 142-43). The Regional Office decision stated inaccurately that there is "no evidence to establish chronic nervous disability existed during active service" (R. 142), ignoring the veteran's multiple treatments for schizophrenia or psychosis or nervousness while she was on active duty (R. 80, 108-121). The Regional Office decision also ignored an October 1983 Medical Board finding that she had been diagnosed with schizophrenic disorder, paranoid type, chronic with acute exacerbation, psychotic on admission, markedly improved with treatment (R. 115-19).

Although Ms. Rancher's February 1, 1985 application for service connection was filed within one year after her discharge on February 1, 1984, the Regional Office decision did not grant her an effective date of the day after her discharge from service in February 1984. See 38 U.S.C § 5110(b)(1); 38 C.F.R. § 3.400(b)(2)(i) and (ii).

Eleven months after the RO decision, on July 17, 1986, the RO received the VA Vocational Rehabilitation report on the

Veteran's condition. The report stated: "This veteran is too psychotic to be able to train or maintain employment. If she reapplies should be referred to the VA panel." (emphasis supplied) (R.165). Obviously, this new evidence filed within the one year appeal period of the August 1, 1985 Regional Office decision raised a claim for a higher rating for her service connected schizophrenia including a 100% schedular rating and a total disability claim based on individual unemployability. See Roberson v. Principi, 251 F.3d 1378 (Fed. Cir. 2001) (VA is required to give a sympathetic reading to the veteran's filings by determining all potential claims raised by the evidence, applying all relevant laws and regulations). The Regional Office did not consider this July 17, 1986 Vocational report in connection with the Veteran's February 1, 1985 application or any later application for increase of her service-connected benefits for schizophrenia.

In her appeal, Ms. Rancher asserted that she was entitled to an earlier effective date than May 10, 1999, for the award of her 100% schedular rating for schizophrenia benefits, to include TDIU benefits (R.1115). She had filed an earlier claim for higher benefits for her service-connected schizophrenia. (R. at 133-36).

In Ms. Rancher's appeal of her July 12, 1995 formal TDIU Application, in February 1999, the Board initially remanded her claim to the Regional Office and ordered the Regional Office to obtain the Social Security Administration's (SSA) records on her SSD benefits (R. 989-996). The Board also ordered a comprehensive psychiatric examination by a VA psychiatrist who was required to state "[a] complete rationale for any opinions expressed" (R. 994). The Board stated that, "[a]fter the above actions have been completed, the RO must then re-adjudicate the veteran's individual unemployability claim." (R. 995).

On May 10, 1999, Ms. Rancher was examined by a VA psychiatrist, Dr. Groff (R. 1027-1029). Dr. Groff stated that he reviewed the claims file (which did not include the SSA records). He stated that he agreed with Dr. McNutt and Dr. Martha Ban who had previously concluded that Ms. Rancher was "totally unemployable" due to her service-connected schizophrenia.

Prior to receipt of the SSA records, in August 1999, the Regional Office increased the veteran's rating to a 100% schedular rating, effective May 10, 1999 (R. 1036-1040). In August 1999, the RO denied Ms. Rancher's claim for TDIU benefits because it found her claim for individual unemployability to be a "mute (sic) point."

(R. 1043). The Regional Office obtained the SSA records in June 2000 (R. 1088-1101).

When the veteran's claim for an earlier effective date for her total rating was appealed to the Board, the Board in the May 2001 decision on appeal determined, without obtaining a medical opinion as to the onset of her total rating for schizophrenia, that she was entitled to an effective date of December 11, 1996 for her total rating. (R. 1-14).

The veteran who is totally disabled due to her schizophrenia did not intend to withdraw her TDIU claim in her June 28, 2000 letter; she was merely stating that she did not want the granted 100% schedular rating changed. On July 10, 2000, the RO issued a Supplemental Statement of the Case (SSOC) denying the veteran's TDIU claim. Her representative in a later brief filed on January 2001 with the Board stated that her appeal included the issue of total disability based on individual unemployability (R. 1115)

The Board's certified list included the Representative's brief as relevant to its decision (R. 1128), but the Board's May 22, 2001 decision did not refer to the representative's brief or state adequate reasons and bases for its conclusion that she "withdrew the TDIU

claim from appeal.” (R. 2). See 38 U.S.C. § 7104(d) (Board is required to provide a “written statement of the Board’s findings and conclusions, and the reasons or bases for those findings and conclusions”); Livesay v. Principi, 15 Vet. App. 165 (2001).

V. SUMMARY OF ARGUMENT

The Appellant Ms. Allison Rancher is appealing the Board’s May 22, 2001 decision to this Court. The Board’s decision set an effective date of December 11, 1996 for her 100% schedular rating for her service-connected schizophrenia. The Appellant contends that she is entitled to an earlier effective date for her 100% schedular benefits or for TDIU claim. The Board improperly found that she had waived or withdrawn her TDIU claim, which she filed in July 1995.

The Appellant contends that she is entitled to an earlier effective date on two bases. Her initial application to establish service connection has not been finally decided because the VA ignored crucial vocational evidence submitted within the appeal period of the rating decision on this initial application. This vocational evidence has never been considered by the VA and was not considered by the Board in the decision on appeal. The

Appellant contends that the effective date assigned by the Board was clearly erroneous because there is no plausible basis for it.

The Appellant also contends that even assuming arguendo that her prior inferred claim for an increased rating (including TDIU benefits) for her service-connected schizophrenia has been finally denied, the Board did not state adequate reasons and bases for its assignment of an effective date of December 11, 1996, because it improperly discredited relevant medical evidence during and after July 1995 which proved that she was entitled to a 100% rating or TDIU rating for her service-connected schizophrenia before December 1996.

The Board did not comply with the Veterans Claims Assistance Act of 2000 (VCAA) because it did not remand the claims to the Regional Office (RO) to comply with the VCAA and its statement of compliance by the RO does not meet the requirements of the VCAA.

VI. ARGUMENT

I. THE BOARD'S ASSIGNMENT OF AN EFFECTIVE DATE WAS CLEARLY ERRONEOUS AND THEREFORE DUE TO BE REVERSED

It is the Appellant's contention that her initial February 1, 1985 application is not final because the Regional Office and the Board have never considered the July 17, 1986 new evidence submitted eleven months after the initial August 1, 1985 Regional Office decision.

In the May 2001 Board decision on appeal, the Board gave no consideration to the July 17, 1986 Vocational Rehabilitation report, merely assuming that the initial application was final.

The "resolution of the question of whether the Board accurately determined the effective date requires the Court to decide whether the Board erred in its fact finding." Scott v. Brown, 7 Vet. App. 184, 188 (1994). When reviewing the Board's fact finding, the Court may only "hold unlawful and set aside such finding if the finding is clearly erroneous." 38 U.S.C. § 7261(a)(4); Gilbert v. Derwinski, 1 Vet. App. 49, 52-53 (1990). In determining if a finding is clearly erroneous, this Court is not permitted to substitute its judgment for that of the Board on issues of material fact; if there is a 'plausible' basis in the record for the factual

determinations of the BVA . . . we cannot overturn them." Id. at 53. However, under section 7261(a)(4), title 38, U.S. Code, it must set aside a finding of fact as clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Id. at 52 (citing United States v. United States Gypsum Co., 333 U.S. 364, 395, 92 L. Ed. 746, 68 S. Ct. 525 (1948)). The Court may reach that conclusion only if there is no "plausible basis in the record" for the Board findings. See Gilbert, supra. The rules for establishing the effective date for an award of disability benefits where the Application is filed within one year of discharge are found in 38 U.S.C. § 5110(b)(1) and 38 C.F.R. § 3.400(b)(2)(i) and (ii).

38 U.S.C. § 5110(b)(1) provides as follows:

The effective date of an award of disability compensation to a veteran shall be the day following the date of the veteran's discharge or release if application therefore is received within one year from such date of discharge or release.

38 C.F.R. § 3.400(b)(2)(i) and (ii) provide as follows:

(2) Disability compensation--- (i) Direct service connection (T33.4(b)). Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later.

Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

(ii) Presumptive service connection (3.307, 3.308, 3.309). Date entitlement arose if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. Where the requirements for service connection are met during service, the effective date will be the day following separation from service if there was continuous active service following the period of service on which the presumption is based and a claim is received within 1 year after separation from active duty.

(This rule has been existing since at least January 20, 1971, when the rule was codified at 38 U.S.C. § 3010(b) [Appendix A])

When a claim is filed and the RO renders an adverse decision, the claimant has the right to disagree with that decision by filing a Notice of Disagreement (NOD) within one year from the date of mailing of notice of the decision. 38 U.S.C. § 7105(b)(1). However, "new and material evidence received prior to the expiration of the appeal period . . . will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period." 38 C.F.R. § 3.156(b).

(This rule has been existing since at least 1957, when the rule was at 38 C.F.R. § 3.201(e) [Appendix A]). In addition, 38 C.F.R. § 3.400(h) provides as follows:

(h) Difference of opinion (3.105). (1) As to decisions not final prior to receipt of an application for reconsideration or to reopen, or prior to reconsideration on Department of Veterans Affairs initiative, the date from which benefits would have been payable if the former decision had been favorable.

38 C.F.R. § 3.400(q) provides as follows:

(q) New and material evidence (3.156) --- (1) Other than service department records --- (i) Received within appeal period or prior to appellate decision. The effective date will be as though the former decision had not been rendered.

Here, the RO rendered an adverse decision on August 1, 1985. Thus, if new and material evidence were presented or secured on behalf of the Appellant before August 1, 1986, it will be considered as having been filed in connection with her February 1, 1985 application (the claim which was pending at the beginning of the appeal period). See Id.; Muehl v. West, 13 Vet. App. 159, 161-62 (1999). Because the July 17, 1986 VA Vocational Rehabilitation records were received within the appeal period, the Court should hold that the August 1, 1985 RO decision was not a final decision. The Board erred in not addressing the issue of whether the

February 1, 1985 initial claim was open. The Board also erred in failing to review the claims file and in failing to review the inferred claim for an increased rating (including TDIU) for her service connected schizophrenia. See Roberson v. Principi, supra. The Board should have reviewed the July 1985 VA vocational rehabilitation report in conjunction with the original February 1, 1985 claim. See 38 C.F.R §3.156(b). If the original claim is still open, then the date of the receipt of evidence to support that claim is irrelevant. McGrath v. Gober, 14 Vet. App. 28, 35 (2000)

Because there was no final decision on the February 1, 1985 claim, the only plausible basis for determining the effective date is in accordance with 38 U.S.C. § 5110(b)(1) and 38 C.F.R. § 3.400(b)(2)(i) and (ii). The evidence in Ms. Rancher's file established a prima facie case for total disability due to her service-connected schizophrenia from January 1985. The evidence in the SSA records indicates that Ms. Rancher was receiving SSA total disability benefits from January 1985 because she met the Commissioner's Listing 12.03A and B from her onset of January 5, 1985, solely due to her schizophrenia (R. 1097). See 20 C.F.R. Listing 12.03, Appendix 1 to Subpart P; Powell o/b/o Powell v. Heckler, 773 F.2d 1572, 1575-77 (11th Cir. 1985).

Evidence of a disability possessed by one agency has import to disability decisions by the other. See 38 U.S.C. § 5105; see, e.g., Murincsak v. Derwinski, 2 Vet. App. 363, 370 (1992) (holding VA failed in its duty to assist by not acquiring pertinent SSA records where veteran had filed well-grounded claim and VA had actual notice that veteran was receiving SSA disability benefits). Although Ms. Rancher's records from SSA demonstrated that she had been totally disabled solely due to her schizophrenia since January 1985, the RO ignored the significance of this evidence in its July 10, 2000 SSOC (R. 1103-1105). The Board also ignored the significance of these SSA records (R. 10).

In accordance with 38 U.S.C. § 5110(b)(1) and 38 C.F.R. § 3.400(b)(2), her effective date should be the day after her discharge from the U.S. Army. Accordingly, the effective date of her claim is February 2, 1984, and the Board's decision assigning December 11, 1996, is clearly erroneous. See Muehl, Gilbert, supra; see also, Hoag v. Brown, 4 Vet. App. 209, 212-13 (1993) (the Court found no plausible basis in the record for the Board's finding that myofascial pain syndrome was not manifested in service where veteran was diagnosed with fibromyalgia in service). Because there is no other permissible view of the evidence, remand for further adjudication

on this issue is not indicated. See Hersey v. Derwinski, 2 Vet. App. 91, 95 (1992).

II. THE SECRETARY IMPROPERLY FAILED TO STATE ADEQUATE REASONS AND BASES FOR ITS CONCLUSION THAT THE APPELLANT WAS NOT ENTITLED TO AN EARLIER EFFECTIVE DATE BEFORE DECEMBER 11, 1996, FOR HER GRANTED APPLICATION FOR 100% SCHEDULAR BENEFITS FOR SCHIZOPHRENIA

The Board's decision does not specifically address all of the medical evidence in the record on the onset of Ms. Rancher's total disability solely to her schizophrenia; even when the Board does address the medical evidence in the record, it fails to provide an adequate statement of its reasons and bases for not finding her service-connected schizophrenia to be totally restricting or totally disabling. See Livesay v. Principi, 15 Vet.App. 165 (2001); 38 U.S.C. § 7104(d) (Board is required to provide a "written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions"); see also e.g., Buckley v. West, 12 Vet.App. 76, 84 (1998); Allday v. Brown, 7 Vet.App. 517, 527 (1995); Gilbert, supra. Accordingly, a remand is required. Ohland v. Derwinski, 1 Vet.App. 147, 149 (1991) ("The BVA decision here includes neither an analysis of the credibility or probative value of

the evidence submitted by or on behalf of the veteran in support of her claim nor any explanation of the Board's conclusion ...").

The Board referred to a medical examination for SSA purposes in December 1994. In this reference, the Board implies that the examiner concluded she was not totally disabled due to her schizophrenia. The Board partially quoted the doctor's statement: "[s]he appears capable of some form of employment" (R. 9-10). Dr. Charles E. Houston, Sr., the examining psychologist, actually stated that "she appears capable of some form of employment, but her psychiatric history and paranoia likely interferes with her ability to remain gainfully employed." (R. 1099) (emphasis supplied). In ignoring Dr. Houston's statement that "her psychiatric history and paranoia likely interferes with her ability to remain gainfully employed," the Board was attempting to minimize the degree of impairment caused by her service-connected schizophrenia. The Board also completely ignored the November 1988 SSA records which confirmed that Ms. Rancher's schizophrenia was so severe that she met the Commissioner's Listing 12.03 for schizophrenia from January 1985 and therefore qualified for total SSA disability based only on her schizophrenia. (R. 1088-97).

The Board attempted to minimize the findings made by SSA's doctors who noted that her functioning was "marked" and not "extreme". (R. 10).

The Board also attempted to discredit the July 12, 1995 VA report by Katharyn Dowdle, a VA mental health RN Clinical specialist, who opined that Ms. Rancher "is unable to compete for or maintain gainful employment." (R. 772). The Board stated that this mental health RN "appears" to have reached this conclusion partially based on Ms. Rancher's diabetes, which is not service-connected. The Board further stated that the "detail contained in the report was not sufficient to establish a measurable increase in the severity of the service-connected disability." (R. 10). Ms. Dowdle's only diagnosis for Ms. Rancher was Schizoaffective Disorder without any discussion of her diabetes. Ms. Dowdle's professional opinion that Ms. Rancher was "unable to compete for or maintain gainful employment" was based solely on her connected schizophrenia.

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schizophrenia either

The Board also attempted to discredit the professional opinion of Dr. Thomas McNutt, a counseling Psychologist at the VAMC for basically the same reasons as RN Katharyn Dowdle's opinion. On July 27, 1995, Dr. McNutt stated "based on a review

of her records and the assessment on 7/14/95, the veteran in (sic) considered to be unemployable." (R. 770). The Board stated, "it appears that this examiner's conclusions pertaining to impairment for work were also based on a combination of service- and non-service-connected disorders." (emphasis supplied) (R. 11). It is unlikely that this VAMC psychologist (or RN Dowdle) was expressing an opinion on medical matters such as her diabetes on which he was not qualified to opine.

The Board did not refer to September 29, 1988 through November 2, 1988, discharge summary from the VAMC Tuscaloosa which stated that Ms. Rancher was Judgment/insight impaired, had borderline intellectual functioning, audiovisual hallucinations reported by patient, hyper verbal/hyperactive, either hypo manic or manic state; affect very labile - range of affect with anger to relatives and friends to laughing; considerable religiosity, grandiose/paranoid delusions, in addition to history of chronic psychosis with noncompliance, the patient had family conflicts and a history of boyfriend problems. Her employability status is the patient probably is unable to compete for gainful employment - however, she may benefit from continued efforts at vocational rehabilitation." (R. 207-10).

The Board did not consider the July 3, 1991 through August 2, 1991 hospital treatment and discharge summary from the VAMC Tuscaloosa, which stated that she complained of fear of staying alone at home or leaving the house, inability to relate to others, and feelings of worthlessness. She verbalized some ideas of reference, fears of satanic residuals. She had poor judgment. Her intelligence was estimated in the borderline level. Her employability status was unemployable. (R. 226-28).

The Board did not consider the November 4, 1992, progress note from the VAMC Tuscaloosa, which stated that under the stress of employment it is very likely that she would regress to the paranoid state (delusions hallucinations) expressed in the military. Her prognosis is guarded. The note stated, "veteran is considered unemployable because of her service-connected diagnosis of schizophrenia." This medical opinion was signed by three doctors. (R. 300-01).

These doctors' written opinion is consistent with RN Dowdle's July 1995 opinion and Dr. McNutt's July 1995 opinion and with Dr. Houston's December 1994 opinion and January 1995 SSA's finding that she was totally disabled solely due to her schizophrenia, but the Board did not state any adequate reasons

and bases for disregarding any of these professional mental health opinions. Accordingly, a remand is required. Ohland v. Derwinski, supra.

The Appellant therefore moves the Court to remand her claims for an earlier effective date to the Board for re-adjudication and its statement of adequate reasons and bases for its conclusion. See 38 U.S.C. § 7104(d); Livesay v. Principi, Buckley v. West; Allday v. Brown; Gilbert, all supra.

III. THE SECRETARY FAILED TO APPLY THE VCAA TO THE APPELLANT'S CLAIMS.

In the May 2001, Board decision on appeal, the Board addressed the question of whether the RO had complied with the Veterans Claims Assistance Act of 2000 (VCAA) (R. 12-13). The Board recognized that the RO "has not yet considered the claim here in the context of the new law." The Board found that a remand to the RO was not necessary because the RO had furnished an October 1999 SOC to the veteran by which "she has been notified of the information and evidence necessary to substantiate her claim." (R. 12-13).

In its October 1999 Statement of the Case (SOC), the VARO had stated in relevant part:

38 U.S.C. Section 5107. Burden of proof; benefit of the doubt

(a) Except when otherwise provided by the Secretary in accordance with the provisions of this title, a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Secretary shall assist such a claimant in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 5106 of this title.

(R. 1053). This notice was clearly not consistent with the VCAA.

Once the Board became aware that the VARO had failed to apply and comply with its duties under the VCAA in its rating decision and in its October 1999 SOC, the Board was required to remand the case at that point to the VARO for further development and application of the correct law. Since the ground given by the VARO for its decision led to an erroneous conclusion and consequently to an insufficient factual development of the record, its decision could not be affirmed. See Hensley v. West, 212 F.3d 1255, 1264 (Fed. Cir. 2000) (where the Veterans Court recognized that the Board erred as a matter of law in applying the wrong law,

the proper course was for the Court to remand the claim to the Board and not to engage in de novo fact finding).

The Board improperly failed to apply specific provisions of VCAA (effective November 9, 2000) on the Secretary's duty to assist and duty to notify in connection with her claims.

The Board denied the Appellant's claims for an earlier effective date for her 100% schedular rating and for granting her TDIU claim without informing her what evidence was necessary to grant these claims. The Secretary did not, comply with its duty to notify the veteran under 38 U.S.C. § 5103(a) which evidence, if any, will be obtained by the claimant and which evidence, if any, will be obtained by the Secretary. See Quartuccio v. Principi, 16 Vet. App. 183 (2002).

Assuming arguendo that the Appellant's Application did not contain medical evidence necessary to grant an earlier effective date for her 100% schedular rating or to grant her TDIU claim, under the VCAA, the VA was required to inform the Appellant that her Application was incomplete because it did not contain this medical evidence. The VA was also required to notify the Appellant of "the information necessary to complete the application." 38 U.S.C. § 5102(b) (2000) provides as follows:

"(b) Incomplete applications. If a claimant's application for a benefit under the laws administered by the Secretary is incomplete, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application." (emphasis supplied).

If VA found her Application to be complete or substantially complete, then 38 U.S.C. § 5103 required

"(a) Required information and evidence. Upon receipt of a complete or substantially complete application, the Secretary shall notify the claimant and the claimant's representative, if any, of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant." (emphasis supplied).

While the Board recognized that the VCAA was required to be applied to the Appellant's claim, the Board did not actually apply the new duty to notify under 38 U.S.C. §§ 5102(b) or 5103 with regard to her missing medical evidence. The Board also did not apply the new duty to assist because the Secretary failed to obtain a medical opinion based on a review of the complete claims file (including the SSA records), as ordered in its prior Remand order

(R. 989, 994). See Stegall v. West, 11 Vet. App. 268, 271 (1998). (a remand order by the BVA "confers on the veteran..., as a matter of law, the right to compliance with the remand order []").

The Appellant's application should be remanded to the Secretary so that the VA can comply with the VCAA. See Quartuccio, supra.

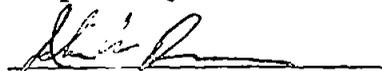
VII. Conclusion

The Appellant moves the Court to set aside the Board's assignment of an effective date of December 11, 1986 as clearly erroneous and to assign the only possibly correct effective date of February 2, 1985, for her application.

Alternatively, the Appellant moves the Court to remand her claims to the Board to state adequate reasons and bases for the consideration of all relevant medical evidence and the assignment of an earlier effective date.

This the 11th day of June 2004.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Appellant's Brief on Michael Burdick, Esq., Office of the General Counsel (027C), 810 Vermont Ave., N.W., Washington, D.C. 20420, by regular first-class mail, postage prepaid and properly addressed, on this the 11th day of June 2004.



John F. Cameron
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 18th day of July, 2008, I caused to be placed in the United States mail (first-class mail, postage paid) copies of "RESPONDENT-APPELLEE'S BRIEF" and "SUPPLEMENTAL APPENDIX" addressed as follows:

John F. Cameron
P.O. Box 240666
Montgomery, AL 36124

A handwritten signature in cursive script, appearing to read "Sue Smith", is written over a horizontal line.