United States Court of Appeals for the Federal Circuit

RICARDO A. HAYNES,
Claimant-Appellant

v.

ROBERT WILKIE, SECRETARY OF VETERANS AFFAIRS,
Respondent-Appellee

2019-1535

Appeal from the United States Court of Appeals for Veterans Claims in No. 17-4657, Judge Amanda L. Meredith.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

DISMISSED

ENTERED BY ORDER OF THE COURT

October 9, 2019

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

NOTE: This disposition is nonprecedential.

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2019-1535

Appeal from the United States Court of Appeals for Veterans Claims in No. 17-4657, Judge Amanda L. Meredith.

Decided: October 9, 2019

RICARDO A. HAYNES, Washington, DC, pro se.

SEAN LYNDEN KING, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent-appellee. Also represented by JOSEPH H. HUNT, ROBERT EDWARD KIRSCHMAN, JR., LOREN MISHA PREHEIM; SAMANTHA ANN SYVERSON, Y. KEN LEE, Office of General Counsel, United States Department of Veterans Affairs, Washington, DC.

Before NEWMAN, DYK, and CHEN, *Circuit Judges.*

PER CURIAM.

Ricardo A. Haynes, proceeding *pro se*, appeals the determination of the United States Court of Appeals for Veterans Claims (Veterans Court) affirming the decision of the Board of Veterans' Appeals (Board) denying Mr. Haynes's claim for an increased disability rating. Because we lack jurisdiction over this appeal, we *dismiss*.

I.

Mr. Haynes served on active duty in the U.S. Army from September 1988 to March 1992. In January 2003, he was granted disability compensation for post-traumatic stress disorder (PTSD) with a 50% disability rating. In April 2005, Mr. Haynes filed a claim for an increased disability rating. Though his claim was originally denied by the Veterans Affairs (VA) Regional Office (RO) in December 2005, his disability rating was eventually increased to 70% effective April 29, 2005, and to 100% effective April 19, 2012, over the course of his appeal.

Mr. Haynes sought to increase his disability rating for PTSD to 100% for the period between April 29, 2005 and April 19, 2012, but the Board denied entitlement to this increase. A 100% disability rating for mental disorders is warranted where evidence demonstrates the following:

> Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory

> loss for names of close relatives, own occupation, or own name.

38 C.F.R. § 4.130. To evaluate entitlement to a particular disability rating, a fact-finder must make findings regarding the veteran's "occupational and social impairment" and not just focus on presence of certain symptoms. *See Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 116–17 (Fed. Cir. 2013) (interpreting § 4.130 as "requir[ing] not only the presence of certain symptoms but also that those symptoms have caused occupation and social impairment" associated with the requested disability rating). Based on Mr. Haynes's lay statements, VA treatment records, and VA examination reports, the Board found that Mr. Haynes had been employed and had maintained relationships with family and friends during the relevant period between 2005 and 2012. Thus, the Board found that Mr. Haynes did not demonstrate that his PTSD, during that time, had caused "total occupational and social impairment" to warrant a 100% disability rating under § 4.130. SAppx16.[1]

The Veterans Court affirmed the Board's decision, noting, among other things, that Mr. Haynes "does not expressly dispute the Board's factual findings that there was not total occupational and social impairment." SAppx3. Mr. Haynes's appeal followed.

II.

Our jurisdiction to review decisions by the Veterans Court is limited. *Wanless v. Shinseki*, 618 F.3d 1333, 1336 (Fed. Cir. 2010). Absent a constitutional issue, which Mr. Haynes agrees is not in dispute here, we "may not review (A) a challenge to a factual determination, or (B) a

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[1] Only one numbered appendix was provided, by the Government, labeled "Supplemental Appendix." Because it was not joined by Mr. Haynes, we will refer to citations within it with the given prefix "SAppx" and not J.A.

challenge to a law or regulation as applied to the facts of a particular case." 38 U.S.C. § 7292(d)(2). We may review "the validity of a decision of the [Veterans] Court on a rule of law or of any statute or regulation . . . or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the [Veterans] Court in making the decision." 38 U.S.C. § 7292(a).

III.

We conclude that we do not have jurisdiction to review any of Mr. Haynes's arguments on appeal, though his arguments are less than clear. First, in response to whether the Veterans Court's decision involved "the validity or interpretation of a statute or regulation," Mr. Haynes checked "No." Appellant's Informal Br. at 1. While Mr. Haynes proceeded to argue that the Veterans Court's decision was "out of compliance with federal regulations and statutes," *id.*, he failed to identify any particular law or articulate any theory of how the Veterans Court legally erred, so as to provide a basis for our jurisdiction.

Second, Mr. Haynes appears to argue that the Veterans Court erred by failing to obtain certain court martial records. *Id.* It is unclear what records he is referring to and how they are even relevant to this case. To the extent they are relevant to undermining the Board's finding that Mr. Haynes lacked "total occupational and social impairment" during the relevant time period, that inquiry would turn on facts that are beyond the scope of our jurisdiction. *See* 38 U.S.C. § 7292(d)(2); *see also Clements v. Shinseki*, 414 F. App'x 283, 285 (Fed. Cir. 2011). If Mr. Haynes is implicitly arguing that the VA failed to satisfy its duty to assist by not retrieving these records, that argument

appears to be waived.[2] And even if it is not waived, Mr. Haynes again does not explain why the Veterans Court's alleged failure to obtain certain records constitutes an error in legal interpretation such that we would have jurisdiction.

Third, Mr. Haynes asks us to hold that the "Veteran Administration Counsel reasons and evidence" are "inadmissible" because they are not in his possession.[3] Appellant's Informal Br. at 2. We are unaware of, and Mr. Haynes fails to provide, any legal basis for this request. Thus, there is no allegation of any legal error for which we have jurisdiction to review.

Finally, Mr. Haynes appears to be challenging the dismissal of a whistleblowing case in which he was involved, but that is a separate case that is completely distinct from this appeal.

Mr. Haynes has not presented any argument that could provide a basis for this court's jurisdiction. We have considered Mr. Haynes's potential remaining arguments and find them unpersuasive. Accordingly, we dismiss this appeal.

DISMISSED

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[2] The Board found that Mr. Haynes had not "raised any issues with the duty to notify or duty to assist." SAppx10.

[3] It is unclear what information Mr. Haynes is referring to. To the extent Mr. Haynes is seeking additional information concerning filings at the Veterans Court, such information may be available from a docket search on the Veterans Court's website. To the extent Mr. Haynes wishes to review material from his claims file, he should contact the RO.

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 17-4657

RICARDO A. HAYNES, APPELLANT,

V.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before MEREDITH, *Judge*.

MEMORANDUM DECISION

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

MEREDITH, *Judge*: The appellant, Ricardo A. Haynes, through counsel appeals an August 10, 2017, Board of Veterans' Appeals (Board) decision that denied an increased disability rating for post-traumatic stress disorder (PTSD), currently evaluated as 70% disabling, from April 29, 2005, to April 19, 2012. Record (R.) at 1-12. This appeal is timely, and the Court has jurisdiction to review the Board's decision pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). Single-judge disposition is appropriate. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the following reasons, the Court will affirm the Board's decision.

I. BACKGROUND

The appellant served on active duty in the U.S. Army from September 1988 to March 1992. R. at 2371. In January 2003, a VA regional office (RO) granted his disability compensation claim for PTSD and awarded a 50% disability rating, effective April 2001. R. at 1619-21, 1624-28. This appeal arises from his April 2005 claim for an increased disability rating, which was initially denied by an RO in December 2005. R. at 3, 1505-09, 1519; *see* R. at 1425-31, 1502-03. During the course of his appeal, VA granted a 70% disability rating from April 29, 2005, and a 100% disability rating from April 19, 2012. R. at 88-93, 1384-87, 1395-98.

In August 2017, the Board denied entitlement to a 100% disability rating for PTSD from April 29, 2005, to April 19, 2012, finding that the evidence did not demonstrate that the appellant's PTSD was productive of total occupational and social impairment. R. at 8. This appeal followed.

II. ANALYSIS

The appellant argues that the Board failed to support its decision with an adequate statement of reasons or bases, alleging that the severity of his PTSD has been the same throughout the appeal period and that the Board failed to discuss evidence of several symptoms, which he asserts are consistent with the diagnostic criteria for a 100% disability rating. Appellant's Brief (Br.) at 4-10 (referring to persistent delusions and hallucinations, grossly inappropriate behavior, gross impairment in thought processes or communication, social withdrawal, and incompetence to handle the disbursement of funds). The Secretary disagrees in part with the appellant's characterization of some of the evidence, but argues that, even assuming that the appellant experienced these symptoms, "the presence of some symptoms in the criteria for a 100% disability rating does not establish entitlement to the rating." Secretary's Br. at 11–17. Rather, the symptoms must cause total occupational and social impairment. *Id.*

The appellant's PTSD is measured against the rating criteria described in 38 C.F.R. § 4.130, Diagnostic Code (DC) 9411, which directs the rating specialist to apply the general rating formula for mental disorders. According to the general rating formula, a 100% disability rating is warranted where the evidence demonstrates the following:

> Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name.

38 C.F.R. § 4.130, DC 9411 (2018). It is well settled that to qualify for a particular disability rating, § 4.130 requires "not only the presence of certain symptoms[,] but also that those symptoms have caused occupational and social impairment" associated with the requested disability rating. *Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 116-17 (Fed. Cir. 2013).

Here, the Board found that the appellant's PTSD was not productive of total occupational and social impairment, noting in part that the appellant had been employed most of the appeal period and that he had maintained relationships with his family and a few friends. R. at 8-9. The

appellant does not expressly dispute the Board's factual findings that there was not total occupational and social impairment, nor does he explain why or how discussion of the symptoms the Board allegedly overlooked undermines the Board's conclusion. Thus, even assuming that the appellant's arguments are sufficient to demonstrate a reasons or bases error, he has not carried his burden of demonstrating how any such error was prejudicial. *See* 38 U.S.C. § 7261(b)(2) (requiring the Court to "take due account of the rule of prejudicial error"); *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) (holding that the harmless-error analysis applies to the Court's review of Board decisions and that the burden is on the appellant to show that he or she suffered prejudice as a result of VA error). Accordingly, the Court will affirm the Board's decision.

III. CONCLUSION

After consideration of the parties' pleadings and a review of the record, the Board's August 10, 2017, decision is AFFIRMED.

DATED: January 9, 2019

Copies to:

Ashley C. Gautreau, Esq.

VA General Counsel (027)

BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF
RICARDO A. HAYNES

[redacted]

DOCKET NO. 07-17 431A) DATE August 10, 2017
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On appeal from the
Department of Veterans Affairs Regional Office in Chicago, Illinois

THE ISSUE

Entitlement to an increased rating for posttraumatic stress disorder (PTSD), currently evaluated as 70 percent disabling for the period from April 29, 2005, to April 19, 2012.

REPRESENTATION

Appellant represented by: Disabled American Veterans

WITNESS AT HEARING ON APPEAL

The Veteran

ATTORNEY FOR THE BOARD

K. Osegueda, Counsel

INTRODUCTION

The Veteran had active service from September 1988 to March 1992.

The case initially came before the Board of Veterans' Appeals (Board) on appeal from a December 2005 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in Chicago, Illinois. In that decision, the RO denied an increased rating for PTSD and continued the 50 percent rating then in effect.

In a November 2007 supplemental statement of the case (SSOC), a Decision Review Officer (DRO) granted a 70 percent rating, effective from April 29, 2005, which was the date that the Veteran filed his claim for an increased rating. In an August 2009 statement, the Veteran indicated that he was seeking a 100 percent schedular rating, and the appeal remained in appellate status.

In a June 2016 rating decision, the RO granted a 100 percent rating, effective from April 19, 2012. Although the appellant has been awarded the maximum schedular rating for his disability from April 19, 2012, the question of his entitlement to a rating in excess of 70 percent prior to that time remains on appeal. *See AB v. Brown*, 6 Vet. App. 35 (1993).

In August 2007, the Veteran presented testimony at a hearing before a DRO at the RO. In February 2011, the Veteran also presented testimony at a videoconference hearing before the undersigned Veterans Law Judge at the RO. Transcripts of these hearings have been associated with the record.

In April 2011, December 2012, and August 2013, the Board remanded the case for further development. That development was completed, and the case has since been returned for appellate review.

This appeal was processed using the Veterans Benefits Management System (VBMS) paperless claims processing systems. Accordingly, any future consideration of this Veteran's case should take into consideration the existence of this electronic record.

FINDING OF FACT

For the period from April 29, 2005, to April 19, 2012, the Veteran's PTSD was productive of occupational and social impairment in most areas, but not total occupational and social impairment.

CONCLUSION OF LAW

For the period from April 29, 2005, to April 19, 2012, the criteria for an increased rating greater than 70 percent for PTSD have not been met or approximated. 38 U.S.C.A. §§ 1155, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.159, 3.321, 4.1-4.14, 4.130, Diagnostic Code 9411 (2016).

REASONS AND BASES FOR FINDING AND CONCLUSION

Neither the Veteran nor his representative has raised any issues with the duty to notify or duty to assist. *See Scott v. McDonald*, 789 F.3d 1375, 1381 (Fed. Cir. 2015) (holding that "the Board's obligation to read filings in a liberal manner does not require the Board . . . to search the record and address procedural arguments when the veteran fails to raise them before the Board."); *Dickens v. McDonald*, 814 F.3d 1359, 1361 (Fed. Cir. 2016) (applying *Scott* to a duty to assist argument).

Law and Analysis

Disability ratings are determined by applying the criteria set forth in the VA Schedule for Rating Disabilities, found in 38 C.F.R., Part 4. The rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. The ratings are intended to compensate, as far as can practicably be determined, the average impairment of earning capacity resulting from such diseases and injuries and their

residual conditions in civilian occupations. 38 U.S.C.A. § 1155; 38 C.F.R. § 4.1. Where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria for that rating. 38 C.F.R. § 4.7.

In considering the severity of a disability, it is essential to trace the medical history of the veteran. 38 C.F.R. §§ 4.1, 4.2, 4.41. Consideration of the whole-recorded history is necessary so that a rating may accurately reflect the elements of disability present. 38 C.F.R. § 4.2; *Peyton v. Derwinski*, 1 Vet. App. 282 (1991). While the regulations require review of the recorded history of a disability by the adjudicator to ensure a more accurate evaluation, the regulations do not give past medical reports precedence over the current medical findings.

Where a veteran appeals the denial of a claim for an increased disability rating for a disability for which service connection was in effect before he filed the claim for increase, the present level of the veteran's disability is the primary concern, and past medical reports should not be given precedence over current medical findings. *Francisco v. Brown*, 7 Vet. App. 55, 57-58 (1994). However, where the question for consideration is a higher initial rating since the grant of service connection, evaluation of the medical evidence since the grant of service connection to consider the appropriateness of "staged rating" (assignment of different ratings for distinct periods of time, based on the facts found) is required. *Fenderson v. West*, 12 Vet. App. 119, 126 (1999); *see also Hart v. Mansfield*, 21 Vet. App. 505 (2007).

The Veteran has contended that he is entitled to an increased rating for his PTSD. As noted above, although the appellant was awarded the maximum schedular rating for his disability effective from April 19, 2012, in a June 2016 rating decision, the question of his entitlement to a rating in excess of 70 percent prior to that time remains on appeal. He is currently assigned a 70 percent evaluation for the period from April 29, 2005, to April 19, 2012, pursuant to 38 C.F.R. § 4.130, Diagnostic Code 9411.

Under Diagnostic Code 9411, a 70 percent rating is warranted when the psychiatric disorder results in occupational and social impairment, with deficiencies in most

areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a work-like setting); inability to establish and maintain effective relationships.

A 100 percent rating is warranted when the psychiatric disorder results in total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name.

The use of the term "such as" in the general rating formula for mental disorders in 38 C.F.R. § 4.130 demonstrates that the symptoms after that phrase are not intended to constitute an exhaustive list, but rather are to serve as examples of the type and degree of symptoms, or their effects, that would justify a particular rating. *See Mauerhan v. Principi*, 16 Vet. App. 436, 442 (2002). It is not required to find the presence of all, most, or even some, of the enumerated symptoms recited for particular ratings. *Id.* The use of the phrase "such symptoms as," followed by a list of examples, provides guidance as to the severity of symptoms contemplated for each rating, in addition to permitting consideration of other symptoms, particular to each veteran and disorder, and the effect of those symptoms on the claimant's social and work situation. *Id.*

In *Vazquez-Claudio v. Shinseki*, 713 F.3d 112 (Fed. Cir. 2013), the Federal Circuit stated that "a veteran may only qualify for a given disability rating under § 4.130 by demonstrating the particular symptoms associated with that percentage, or others of similar severity, frequency, and duration." It was further noted that "§ 4.130

requires not only the presence of certain symptoms but also that those symptoms have caused occupational and social impairment in most of the referenced areas."

The Board notes that the regulations were recently revised to incorporate the Fifth Edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-V) rather than the Fourth Edition (DSM-IV). However, these provisions only apply to cases received by or pending before the AOJ on or after August 4, 2014. The change does not apply to cases certified to the Board prior to that date. In this case, the Veteran's claim was certified to the Board prior to August 4, 2014; therefore, the regulations pertaining to the DSM-IV are for application.

Psychiatric examinations frequently include assignment of a Global Assessment of Functioning (GAF) score. According to the DSM-IV, GAF is a scale reflecting the "psychological, social, and occupational functioning on a hypothetical continuum of mental health illness." There is no question that the GAF score and interpretations of the score are important considerations in rating a psychiatric disability. *See, e.g., Richard v. Brown*, 9 Vet. App. 266, 267 (1996); *Carpenter v. Brown*, 8 Vet. App. 240 (1995). However, the GAF score assigned in a case, like an examiner's assessment of the severity of a condition, is not dispositive of the evaluation issue; rather, the GAF score must be considered in light of the actual symptoms of the Veteran's disorder, which provide the primary basis for the rating assigned. *See* 38 C.F.R. § 4.126(a).

In considering the evidence of record under the laws and regulations as set forth above, the Board concludes that the Veteran is not entitled to an increased rating greater than 70 percent for the period from April 29, 2005, to April 19, 2012.

Throughout the entire appeal, the Veteran has maintained a history of symptoms that predominantly include social withdrawal, hallucinations, paranoid delusions, episodic confusion, tangential thinking, grandiosity, and sporadic, varied sleep. These symptoms support a 70 percent evaluation. Nevertheless, for the period from April 29, 2005, to April 19, 2012, the evidence of record, to include consideration of the Veteran's lay statements, VA treatment records, and the VA examination

reports, does not demonstrate that the Veteran's overall disability picture is consistent with a 100 percent rating.

A 100 percent rating is warranted when the psychiatric disorder results in total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; and memory loss for names of close relatives, own occupation, or own name.

The Veteran does not have a number of the symptoms listed in the 100 percent criteria during the appeal period. There is no evidence of persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; or memory loss for names of close relatives, own occupation, or own name. For example, he denied having suicidal and homicidal thoughts at the July 2005, July 2009, and May 2011 VA examinations. There was also no memory loss or impairment at the July 2009 and May 2011 VA examinations. Additionally, at the July 2005 VA examination, it was noted that the Veteran maintained the normal activities of daily living, and the July 2009 VA examiner indicated that he was able to maintain personal hygiene and basic activities of daily living.

To the extent these symptoms may be shown or argued, the Board emphasizes that the Veteran's PTSD was not productive of total occupational and social impairment.

As to occupational impairment, during the July 2005 VA examination, the Veteran reported that he was unemployed for 30 days, but indicated that he previously worked in a nursing home. In an October 2005 VA treatment note, the Veteran indicated that he was previously employed as a social worker and performed psychosocial therapy in a nursing home for over three years until July 2005. In May 2006 VA treatment notes, the Veteran reported that he had considered returning to college and pursuing graduate education. During the July 2009 VA examination, the Veteran reported that he worked as a technician and a social

worker at a hospital until his grandmother died from 2005 to 2006. He was unemployed for a period following his work at the hospital. However, during the May 2011 VA examination, the Veteran reported that he worked at the Department of Human Services in the food stamps department for five years. He indicated that he usually arrived late due to oversleeping, but he never took vacations. He stated that he got along well with some of his coworkers, but indicated that he had trouble with security at work because he thought that he was being monitored. In a February 2012 Family and Medical Leave Act (FMLA) application, the Veteran indicated that he worked full-time in the Department of Human Services and that his essential job function was preparing customers for independent living. The Board notes that, in a November 2005 VA opinion, the Veteran's treating psychiatrist opined that his symptoms have made employment impossible. However, such a statement is contradicted by the evidence of record that showed that the Veteran was employed in a nursing home, hospital, and at the Department of Human Services during the period on appeal. In addition, in the February 2012 FMLA application, the same psychiatrist noted that it might be necessary for the Veteran to "occasionally be absent from work during flare-ups" of PTSD symptoms. She estimated that the Veteran may have flare-ups two times per month that would incapacitate him for one day per episode.

In summary, the evidence shows that the Veteran has maintained employment during this time period with the exception of the time period following his grandmother's death. Specifically, he worked until the time of her death in June 2005 and then reported in May 2011 that he had been employed full-time for five years, which would have been since 2006. *See also* February 2011 hearing transcript (reporting full-time employment since July 2006).

Moreover, there is no evidence that the Veteran had total social impairment during the appeal period. While the Veteran was socially withdrawn, he did maintain relationships with his family and a few friends throughout the period on appeal. In a May 2008 VA treatment note, the Veteran reported that he lived with family members. During the May 2011 VA examination, he reported that he was teased by his family because he never married and he had not had many intimate relationships. However, he stated that he talked to some of his siblings on a

monthly basis. He also indicated that he had a few friends that he hung out with on a regular basis, and he saw his son three to four times per week and reported that they got along well. Thus, it cannot be said that he had total social impairment, as he did maintain some relationships during this time period.

The Board emphasizes that a 100 percent disability evaluation requires both total social and occupational impairment. *See Melson v. Derwinski*, 1 Vet. App. 334 (1991) (use of the conjunctive "and" in a statutory provision meant that all of the conditions listed in the provision must be met); *cf. Johnson v. Brown*, 7 Vet. App. 95 (1994) (only one disjunctive "or" requirement must be met in order for an increased rating to be assigned).

After considering the evidence of record, the Board finds that the Veteran's symptoms more closely approximate the criteria for a 70 percent disability rating for the period from April 29, 2005, to April 19, 2012. Overall, the Veteran has not demonstrated a level of impairment consistent with the 100 percent criteria, nor have the Veteran's symptoms caused total occupational and social functioning referenced by the 100 percent evaluation criteria. *Mauerhan, supra, Vazquez-Claudio, supra*. The criteria for the next higher rating of 100 percent have not been met or approximated for this time period. *See* 38 C.F.R. § 4.130, Diagnostic Code 9411. Therefore, the Board finds that the Veteran's PTSD warrants a 70 percent rating, and no higher, for the appeal period from April 29, 2005, to April 19, 2012.

ORDER

An evaluation in excess of 70 percent for PTSD for the period from April 29, 2005, to April 19, 2012, is denied.

J.W. ZISSIMOS
Veterans Law Judge, Board of Veterans' Appeals