

Office of Administrative Review

Reading and Analyzing Board Remands – Training Handout 2

Instructor Guide

REMAND DATE: June 9, 2021

REMANDED

Entitlement to service connection for a right shoulder disability, to include as secondary to a service-connected disability is remanded.

Entitlement to service connection for a left shoulder disability, to include as secondary to a service-connected disability is remanded.

Instructor Notes: Discuss that the Board is returning the issues of service connection for right shoulder and left shoulder. Learners should understand that their development actions must cover both shoulders to be sufficient.

REASONS FOR REMAND

The Veteran served on active duty from May 1979 to June 1996.

In February 2018, he testified at a videoconference hearing before the undersigned Veterans Law Judge. A transcript of that hearing is of record.

The appeal was most recently before the Board in April 2018 when it was remanded for further development. There has not been substantial compliance with the remand directives and the claims must be remanded again. *Stegall v. West*, 11 Vet. App. 268 (1998).

Claims of service connection for neck, right knee, and left knee disabilities were also remanded in April 2018. Service connection has been granted for cervical strain, patellofemoral pain syndrome with asymptomatic anterior patellar spur, right knee, and patellofemoral pain syndrome with asymptomatic anterior patellar spur, left knee; the issues are no longer before the Board. See April 2020 rating decision.

Instructor Notes: Discuss that the Board listed the Veteran's service dates and confirmed that he testified at a hearing. Discuss the adjudicatory history of the appeal and that this is a Stegall appeal, meaning the Board remanded it previously but the development was not sufficient.

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The December 2019 VA examiner's opinions regarding the shoulder claims are inadequate because the examiner used the wrong standard for aggravation; the examiner addressed beyond natural progression, rather than the correct "any increase" in disability. 38 C.F.R. § 3.310 (b); *Allen v. Brown*, 7 Vet. App. 439 (1995).

On remand, updated treatment records should be obtained. See 38 C.F.R. § 3.159. See also *Bell v. Derwinski*, 2 Vet. App. 611 (1992).

Instructor Notes: Discuss that the right shoulder and left shoulder are remanded for the same reason, inadequate previous exam. In the reasons sections, the Board explains that the examiner used the wrong aggravation standard. The learner should understand that the development action must address this reason. The Board also listed one sentence that is important learners do not miss, as it can be easily overlooked. The Board indicated that development should include updated treatment records; therefore, the development actions involve more than just exam requests.

The matters are REMANDED for the following action:

1. Obtain the names and addresses of all medical care providers who treated the Veteran for right or left shoulder complaints since service not already associated with the record. After securing the necessary release, take all appropriate action to obtain these records, including any VA treatment records since November 2019.

Instructor Notes: Discuss that the Board listed the remand actions in order. The first step is to request information about medical care providers from the Veteran and request any that are provided.

2. After the completion of the above, obtain an addendum opinion from the VA examiner who provided December 2019 VA opinion, (or another appropriate provider if December 2019 examiner is unavailable) to determine the nature and etiology of the Veteran's right and left shoulder disabilities. Copies of all pertinent records, including this remand, must be made available to the examiner for review. Based on the review of the record (and examination if needed), the examiner should answer the following:

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(a.) For each currently diagnosed shoulder disability, is it at least as likely as not (i) caused or (ii) aggravated by (defined as any increase in disability) the Veteran's service-connected back and/or neck disabilities, to include any associated neurological manifestations? Why or why not?

The examiner must explain the rationale for all opinions in detail, citing to supporting clinical data and/or medical literature, as appropriate. If an opinion cannot be provided, the examiner should indicate why.

Instructor Notes: Discuss that this development action should only be completed after the treatment record development. The Board states exactly what the addendum should ask of the examiner. The exam request must ask the examiner what the Board required in the instructions. Ensure that you read and discuss each element of these instructions for learner understanding.

3. Confirm that the VA medical opinion provided comports with this remand, specifically that the standard for the secondary aggravation opinion is any increase in disability, not the incorrect standard of beyond the natural progression as noted on the examination form itself. If not, get an addendum.

Instructor Notes: Discuss that this action is important because this is a Stegall remand, meaning it was previously remanded and VBA failed to adhere to the remand instructions.