

# Office of Administrative Review

## Reading and Analyzing Board Remands- Training Handout 3

### Instructor Guide

REMAND DATE: September 8, 2021

#### REMANDED

Recognition of the appellant as the helpless child of the Veteran on the basis of permanent incapacity for self-support prior to attaining the age of 18 is remanded.

***Instructor Notes:*** Discuss that the issue on remand here is helpless child.

#### REASONS FOR REMAND

The Veteran served on active duty in the United States Army National Guard from September 1954 to February 1956, and on active duty in the United States Army from May 1956 to May 1958. Unfortunately, he died in August 1981. The appellant is his daughter.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a January 2011 decision of a Department of Veterans Affairs (VA) Regional Office (RO).

In June 2016, September 2020, and February 2021, the Board remanded this appeal for additional development. Unfortunately, another remand is warranted, as there has not been substantial compliance with the Board's remand directives. *Stegall v. West*, 11 Vet. App. 268 (1998) (finding that a remand by the Board confers on the Veteran the right to compliance with its remand orders).

***Instructor Notes:*** Discuss the Board explaining the adjudicatory history of the appeal, as well as stating that this is a Stegall remand, meaning it was remanded previously and VBA did not comply with the remand instructions sufficiently.

**Entitlement to recognition of the appellant as the helpless child of the Veteran on the basis of permanent incapacity for self-support prior to attaining the age of 18 is remanded.**

In February 2021, the Board remanded this claim for additional development, to include obtaining the appellant's records in the possession of the Social Security Administration (SSA). The Board's remand directives specifically stated that all of the appellant's SSA records should be requested, "including any SSA administrative decisions and related

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records.” A March 2021 SSA National Records Center response indicated that there are no medical records for the appellant. However, it is not clear whether the SSA records request specifically included any and all SSA administrative decisions or related records. Thus, it is not clear whether such administrative decisions and related records are unavailable. As such, remand is necessary to attempt to obtain such records from SSA.

In addition, VA has asked the appellant in October 2020 to complete and return medical records releases (VA Form 21-4142, Authorization to Disclose Information to the VA) so that we can obtain copies of her treatment records from several specified private medical treatment providers. However, the Board notes that the October 2020 letter did not specifically include Rusk State Hospital in its list of private medical providers for whom releases were being sought. In a February 2020 letter, the appellant specifically stated that VA could ask for her records from Rusk State Hospital, if needed. On remand, VA should ask the appellant to complete and submit a medical records release (VA Form 21-4142) for Rusk State Hospital.

The Board notes that the appellant has not responded to prior requests for authorization to obtain her private medical treatment records. Thus, the appellant is also notified that the duty to assist is not a one-way street and failing to submit the requested medical records releases may result in the denial of her claim. *Wood v. Derwinski*, 1 Vet. App. 190, 193 (1991).

**Instructor Notes:** Discuss the Board’s reasons for remand here, which focus on record development. No exams or medical opinions are required. The Board specifies why the development on the previous remand was insufficient. The learner should ensure that the new development does not fail for the same reasons.

The matter is REMANDED for the following actions:

1. Ask the appellant to provide a completed release form (VA Form 21-4142) authorizing VA to request copies of her treatment records from any private medical providers, including Rusk State Hospital.

**Instructor Notes:** Discuss that the first step in the remand development is to send the appellant VA Form 21-4142.

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2. If the appellant responds, assist her in obtaining any additional evidence identified. All records/responses should be associated with the claims file. If any records sought are not obtained, notify the appellant of the records that were not obtained, explain the efforts taken to obtain them, and describe further action to be taken (to include affording her the opportunity to submit the records, herself).

**Instructor Notes:** Discuss that the second step of the development action can only be completed after the first step is completed.

3. Request again from SSA any and all records pertaining to the appellant, including any SSA administrative decisions and related records. The requested records should include all determinations and any records indicating that the appellant is currently receiving SSA disability benefits. If the records are not available, that should be documented in the record and the appellant should be notified of the unavailability of the records.

**Instructor Notes:** Discuss that the third step is to request SSA records. SSA records were previously requested but only pertained to medical records. The Board determined that was insufficient and that non-medical SSA records, i.e. determinations, are required. While this was listed as the third step in the remand, it can be done concurrently with step 1. It is not dependent on a response from the Veteran.

4. Then, readjudicate the issue on appeal.

**Instructor Notes:** Discuss that the final action is to adjudicate the helpless child appeal.