

Office of Administrative Review

Reading and Analyzing Board Remands- Training Handout 5

Instructor Guide

REMAND DATE: July 27, 2022

REMANDED

Service connection for bilateral Achilles tendon condition is remanded.

Service connection for bilateral calcaneal plantar posterior spurs is remanded.

Instructor Notes: Discuss that the Board returned the issues of service connection for bilateral Achilles tendon and bilateral calcaneal plantar posterior spurs.

REASONS FOR REMAND

The Veteran served on active duty from November 1980 to May 1983. These matters come before the Board of Veterans' Appeals (Board) on appeal from a May 2014 Rating Decision issued by the Department of Veterans Affairs (VA) Regional Office (RO).

In November 2019 a hearing was held before the undersigned; a transcript is of record.

These matters were before the Board in February 2020 and April 2021 and were remanded for further development.

Instructor Notes: Discuss that these issues were previously remanded, making this a *Stegall* remand. Therefore, the development that was done in conjunction with the previous remand was insufficient. Since this is a *Stegall* remand, it must be designated in VACOLS as such and the decision review officer (DRO) must certify compliance with all remand directives through a VBMS note prior to recertifying the appeal to the Board (M21-1, 7.G.3.g.)

Service Connection

1. Service connection for bilateral Achilles tendon condition is remanded.

In accordance with the April 2021 Board remand instructions, the Veteran was provided a May 2021 VA examination during which the conducting physician opined that it was less likely than not that the Veteran's bilateral Achilles tendon condition is causally related to service. As a rationale, the physician stated that the Veteran separated from service in 1983 and he was not diagnosed with Achilles tendonitis until about 30 years later. However, the physician did not account for the Veteran's competent and credible Board testimony indicating that when he got out of the service, his Achilles tendon pain

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was prevalent. *Layno v. Brown*, 6 Vet. App. 465, 471 (1994). The physician also did not offer an opinion concerning the cause of the Veteran's Achilles tendon condition.

Without an adequate examination, the Board cannot make a fully informed decision on the issue of entitlement to service connection for bilateral Achilles tendon condition. The Board apologizes for the additional delay in remanding the Veteran's claim but finds that it is necessary to make a fair and accurate decision on the claim.

Instructor Notes: Discuss the reasons provided by the Board here, which are that the examiner did not account for the Veteran's testimony and relied only on the time span after discharge.

2. Service connection for bilateral calcaneal plantar posterior spurs is remanded.

In accordance with the April 2021 Board remand instructions, the Veteran was provided a May 2021 VA examination during which the conducting physician opined that it was less likely than not that the Veteran's bilateral calcaneal plantar posterior spurs are causally related to service. As a rationale, the physician stated that the Veteran separated from service in 1983 and was not diagnosed with bilateral calcaneal plantar posterior spurs until about 30 years later. However, a May 2014 VA examination indicates that the onset of the Veteran's bone spurs developed in the late 1980s, which would have been soon after exiting from service. The physician also did not offer an opinion concerning the cause of the bilateral calcaneal plantar posterior spurs.

Without an adequate examination, the Board cannot make a fully informed decision on the issue of entitlement to service connection for bilateral calcaneal plantar posterior spurs. The Board apologizes for the additional delay in remanding the Veteran's claim but finds that it is necessary to make a fair and accurate decision on the claim.

Instructor Notes: Discuss the reasons provided by the Board here, which are that the examiner did not consider all relevant evidence in making an opinion.

The matters are REMANDED for the following action:

1. Please note that this Veteran's case has been advanced on the docket and, by law, ALL remanded claims must be processed expeditiously.

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Instructor Notes: Discuss that the first action is not actually something VBA has to do but rather is a reminder that the remand should be processed quickly.

2. Schedule the Veteran for a VA examination with a podiatrist to determine the nature and cause of his diagnosed bilateral Achilles tendon condition and bilateral calcaneal plantar posterior spurs.

Instructor Notes: The first action is to schedule the Veteran for an examination with a podiatrist. Note that the examination must be conducted by a podiatrist so the exam request must include that requirement. If the exam is returned and was not completed by a podiatrist, it would not be deemed sufficient for remand purposes.

3. The examiner is to be informed that the May 2014 VA examiner indicated that the Veteran's bone spurs developed in the late 1980s and the Veteran is competent and credible to testify that his symptoms began right after service. The examiner should not offer an opinion on the sole basis that there is a 30-year gap between the end of service and a formal diagnosis of both conditions. Rather, the examiner must consider the credible statements of the Veteran describing his foot pain in service from the boots he had to run and march in and how that pain continued since service.

Instructor Notes: Discuss that this is a lengthy section and should be discussed in parts. The first part of this instruction specifies language that must be in the medical opinion request for the examiner. The request should provide the background information the Board has listed. The Board also included instructional verbiage that must be provided to the examiner.

Based on review of the record and examination of the Veteran, the examiner should provide an opinion that responds to the following:

- a. Is it at least as likely as not (50 percent or greater) that the Veteran's bilateral Achilles tendon condition is related to his active duty service?
- b. Is it at least as likely as not (50 percent or greater) that the Veteran's bilateral calcaneal plantar posterior spurs is related to his active duty service?

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Instructor Notes: Discuss that the exam request must include these specific questions after providing the examiner the above-mentioned background information and instructions.

A detailed explanation (rationale) is requested for all opinions provided. (By law, the Board is not permitted to rely on any conclusion that is not supported by a thorough explanation. Providing an opinion or conclusion without a thorough explanation will delay processing of the claim and may also result in a clarification being requested).

Instructor Notes: Discuss that the final part of the remand provides instruction to the examiner that a rationale is required. This should also be read as instruction to the claims processors that if the medical opinion is returned without a sufficient rationale, it should be sent back to the Board without obtaining the required rationale.