



USFC2008-7058-02

{4BE31712-A699-4696-A2BC-D3BACF1A911B}
{95307}{20-080506:135248}{042308}

ADDENDUM

2008-7058

WEST/CRS

**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.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS IN 02-1142
JUDGE ALAN G. LANCE, SR.

**ADDENDUM TO BRIEF OF APPELLANT
ALLISON E. RANCHER**

JOHN F. CAMERON
P.O. Box 240666
Montgomery, AL 36124
TELEPHONE: (334) 502-9500

Attorney for Appellant,
Allison E. Rancher

April 23, 2008

**FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT**

APR 23 2008

**JAN HORBALY
CLERK**

2008-7058

**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.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS IN 02-1142
JUDGE ALAN G. LANCE, SR.

**ADDENDUM TO BRIEF OF APPELLANT
ALLISON E. RANCHER**

JOHN F. CAMERON
P.O. Box 240666
Montgomery, AL 36124
TELEPHONE: (334) 502-9500

April 23, 2008

Attorney for Appellant,
Allison E. Rancher

ADDENDUM

TABLE OF CONTENTS

| <u>Item</u> | <u>Description</u> | <u>Page</u> |
|-------------|--|-------------|
| 1. | United States Court of Appeals for Veterans Claims Memorandum Decision dated October 15, 2004..... | 1-15 |
| 2. | United States Court of Appeals for Veterans Claims Judgment dated November 16, 2007..... | 16 |
| 3. | Docket Sheet | 17-22 |
| 4. | VA Medical Record, dated from January to March 1985..... | 23-25 |
| 5. | Veterans Application for Compensation or Pension, dated February 1985..... | 26-29 |
| 6. | Rating decision, dated July 1985..... | 30-32 |
| 7. | VA Examination Report, dated February 1986..... | 33 |
| 8. | Confirmed Rating Decision, dated April 1986... .. | 34 |
| 9. | VA Letter to Appellant, dated April 1986..... | 35 |
| 10. | VA Vocational Rehabilitation Note, dated May 1986..... | 36 |
| 11. | VA Counseling Record, dated July 1986..... | 37 |
| 12. | VA Special Report of Training, dated July 1986..... | 38 |

| | | |
|-----|--|-------|
| 13. | Statement in Support of Claim, dated April 1988..... | 39 |
| 14. | Letter from Appellant to Congressman Harris, dated April 1988..... | 40-49 |
| 15. | VA Examination Report, dated July 1988..... | 50 |
| 16. | Rating Decision, dated September 1988..... | 51-53 |
| 17. | Rating Decision, dated November 1988..... | 54 |
| 18. | Status Change, dated November 1988..... | 55 |
| 19. | VA Medical Records, dated from September 1988 to November 1988..... | 56-60 |
| 20. | Rating Decision, dated December 1988..... | 61-62 |
| 21. | Rating Decision, dated October 1991..... | 63-65 |
| 22. | Rating Decision, dated March 1993..... | 66-67 |
| 23. | SSA Record, dated November 1988..... | 68-74 |
| 24. | Statement in Support of Claim, with attachments, dated December 1996..... | 75-78 |
| 25. | BVA (Remand) Decision, dated February 26, 1999..... | 79 |
| 26. | Rating Decision, dated August 1999..... | 80-84 |
| 27. | Supplemental Statement of the Case, dated August 1999..... | 85 |
| 28. | Appeal to Board of Veterans' Appeals, dated October 1999..... | 86 |
| 29. | SSA Records, received June 2000..... | 87-88 |

| | | |
|-----|---|---------|
| 30. | Letter from Appellant to VA, dated June 2000..... | 89 |
| 31. | Letter from Appellant to VA, dated June 2000..... | 90-91 |
| 32. | Statement of Representative in Appeal to Case, dated November 2000..... | 92-94 |
| 33. | Appellant's Brief, dated January 2001..... | 95-99 |
| 34. | Board of Veterans' Appeals Decision, dated May 22, 2001..... | 100-112 |
| 35. | Appellant's Brief filed with the United States Court of Appeals for Veterans Claims by John F. Cameron on June 11, 2004..... | 113-120 |
| 36. | Brief of the Appellee filed with the United States Court of Appeals for Veterans Claims by Secretary of Veterans Affairs on September 15, 2004..... | 121 |
| 37. | United States Court of Appeals for Veterans Claims Order dated September 13, 2006..... | 122-125 |
| 38. | Appellant's Motion for Reconsideration/ Panel Review filed with the United States Court of Appeals for Veterans Claims by John F. Cameron on October 4, 2006 | 126-140 |
| 39. | Notice of Appeal, dated January 11, 2008..... | 141 |

ADDENDUM

1

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 02-1142

ALLISON E. RANCHER, APPELLANT,

v.

R. JAMES NICHOLSON,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before LANCE, *Judge*.

MEMORANDUM DECISION

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

LANCE, *Judge*: The appellant, Allison E. Rancher, through counsel, appeals a May 22, 2001, Board of Veterans' Appeals (Board) decision. Record (R.) at 1-13. In that decision, the Board (1) awarded her service-connected paranoid schizophrenia (schizophrenia) a 100% disability rating, effective December 11, 1996, but denied her request for a higher disability prior to that date; (2) found that she had previously withdrawn her claim for total disability based on individual unemployability (TDIU); and (3) referred to the regional office (RO) for further action an unrelated claim for post-traumatic stress disorder (PTSD). R. at 2-4. The Court cannot review the latter claim as part of this appeal. *See Ledford v. West*, 136 F.3d 776, 779 (Fed. Cir. 1998).

On September 13, 2006, a single judge of this Court affirmed the Board's decision with respect to the two claims on appeal. Thereafter, the appellant filed a timely motion for reconsideration or panel review. *See U.S. VET. APP. R. 35*. The Court has determined that the appellant's motion for reconsideration should be granted. Accordingly, the Court will withdraw its September 13, 2006, decision and issue the following decision in its stead. Single-judge disposition remains appropriate. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). This appeal is timely, and the Court has jurisdiction over the case pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). For the

reasons set forth below, the Board's May 22, 2001, decision will be affirmed, in part, vacated, in part, and a matter remanded for further proceedings consistent with this decision.

I. FACTS

The appellant served in the U.S. Army from September 1980 until February 1984. R. at 2. Her preservice psychiatric history was apparently unremarkable, and no mental problems were noted during her induction examination. R. at 16-21, 30-33, 110. However, her mental health began to deteriorate toward the end of her third year of service, and, in October 1983, she was ordered to the Silas B. Hays Army Hospital (SBHAH) for psychiatric treatment. R. at 109-10. Shortly after her admission to the SBHAH, the appellant was allowed to return to her apartment with three Army escorts. A contemporaneous report described the events that transpired during that trip:

The [appellant] wanted to drive her [car] and, therefore, . . . a female officer[] drove her car and the [appellant] was in the passenger's seat. Several miles before she arrived at her house, the [appellant] 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 so the commanding officer had to go to a private telephone booth and call . . . the hospital and request an ambulance. After the ambulance was on its way, . . . the [appellant] went [back] into the car voluntarily. After driving around 1 mile, the [appellant] again jumped from the car and had to be chased. The commanding officer again called . . . [and] requested an ambulance. The ambulance arrived with two men who escorted the [appellant] into the ambulance and she was taken back to the Psychiatry Ward.

R. at 117. The appellant remained at the SBHAH until December 1983, when she was returned to active duty with a diagnosis of atypical psychosis. R. at 112, 138. In the months that followed, the appellant reportedly "experienced auditory hallucinations" and became increasingly paranoid. R. at 138. As noted above, she was honorably discharged in February 1984. R. at 2.

In January 1985, the appellant was admitted to the Tuscaloosa, Alabama, VA medical center (VMAC). R. at 138. The evidence of record indicates that the appellant had been "act[ing] bizarre" in the days prior to her admission, "bumping her head on the floor and biting her sister." R. at 139. The following month, while still admitted at the Tuscaloosa VAMC, she filed a claim with the Montgomery, Alabama, VA RO for a "nervous condition." R. at 133-36. In March of that same year, the Tuscaloosa VAMC discharged the appellant, but noted that she was "unable to engage in stressful employment at th[at] time." R. at 140. In July 1985, the RO granted the appellant service

connection for paranoid schizophrenia. R. at 142-43. The RO assigned a 100% disability rating for her two month admission at the Tuscaloosa VMAC and a 30% disability rating thereafter. *Id.*

In the fall of 1985, the appellant received vocational counseling at the Birmingham, Alabama, RO. R. at 147-49. Her counselor noted that the appellant had recently lost two jobs "because of her service[-]connected disability" and that she "ha[d] 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." R. at 149. According to the counselor, the appellant "[wa]s unemployable and untrained in any suitable occupation" as "[t]he effects of her service[-]connected disability materially hinder[ed] her ability to maintain suitable employment." *Id.* The counselor did, however, develop a vocational rehabilitation plan for the appellant, with the "objective" of "providing the [appellant] with preliminary training and then a master's degree in rehabilitation counseling at [the] University of Alabama in Tuscaloosa, Alabama." R. at 147-48. A VA vocational rehabilitation specialist was also assigned to monitor the appellant's progress. *Id.*

In January 1986, the appellant's vocational rehabilitation specialist drafted a progress report. R. at 154-55. The report noted that the appellant had "got[tten] loud and abusive" and acted "belligerent[ly]" toward the school's staff on two occasions; that campus security had been called during one of these incidents; and that the appellant had recently charged unauthorized supplies to her bookstore account. R. at 154. The rehabilitation specialist further reported that appellant had "got[ten] loud and began to use profanity" during their most recent conversation. R. at 155. His report recommended that the appellant's vocational rehabilitation be terminated "as she is not in any type of mental attitude to continue training." *Id.* The following month, the appellant received a neuropsychiatric examination at the Tuscaloosa VAMC. R. at 157-58. The examiner provided a diagnosis of schizophrenia and found that the degree of incapacity caused by her illness was "[m]oderately severe," that the degree of social impairment was "[m]oderate," and that her prognosis was "[g]uarded." R. at 158.

In April 1986, the RO affirmed the appellant's 30% disability rating and received a copy of the appellant's recently filed application for Social Security Administration (SSA) benefits. R. at 160-62. The following month, VA notified the appellant that her vocational benefits had been terminated. R. at 167. In July of that year, the appellant's vocational rehabilitation specialist drafted

a new employment status report stating that she "[wa]s too psychotic to be able to train or maintain employment." R. at 165.

In March 1988, the RO notified the appellant that her pending claim was being processed. R. at 174. The following month, the RO again affirmed the appellant's 30% disability rating. R. at 176. Two months later, the RO received additional evidence and a statement from the appellant. R. at 180-93. In July, she received another VA neuropsychiatric examination. R. at 196-97. The examiner concluded that the overall severity and degree of social and industrial impairment caused by the appellant's schizophrenia was moderate to severe. *Id.*

In September 1988, the RO denied the appellant's claim for an increased disability rating for her service-connected schizophrenia, but granted service connection for a bilateral knee disorder. R. at 199-201. Later same month, the appellant was readmitted the Tuscaloosa VAMC after becoming "paranoid and delusional and threatening toward her family." R. at 207. In October of that year, the appellant filed another increased-rating claim for her service-connected schizophrenia. R. at 203. In a decision issued shortly thereafter, the RO assigned a 100%, temporary disability rating as of the date of her most recent hospitalization. *Id.* In December 1988, following her release from the Tuscaloosa VAMC, the RO restored the appellant's 30% disability rating for her service-connected schizophrenia. R. at 205, 213-14. The RO did not receive any new documents from the appellant during the next 12 months.

In July 1991, the appellant was readmitted to the Tuscaloosa VAMC. R. at 226-27. A few days later, the RO received increased-rating claims for both of her service-connected conditions. R. at 220-21. Later that same month, the appellant sent VA a letter requesting a total disability rating based on individual unemployability (TDIU). R. at 223. The appellant was discharged from the Tuscaloosa VAMC in August 1991; that same month, the RO issued a decision assigning the appellant a 100% disability rating for her schizophrenia during the period of her most recent hospitalization and restoring her 30% disability rating thereafter. R. at 228, 231-33. In September of that year, she received another VA mental examination. R. at 243-44. The examiner provided a diagnosis of chronic paranoid schizophrenia and noted that "her ability to work appears questionable." R. at 244. In October 1991, the RO denied the appellant's increased-rating and TDIU claims. R. at 248-50.

Eleven months later, in September 1992, the appellant submitted another statement and additional evidence in support of her claims. R. at 254-56. The RO treated those documents as a request to reopen her claims and, later that same month, affirmed its previous rating decisions. R. at 258-59. In October, the appellant filed new increased-rating and TDIU claims. R. at 266-67. Shortly thereafter, the RO affirmed its prior denials. R. at 269. In November 1992, three physicians at the Tuscaloosa VAMC opined that the appellant was "unemployable because of her [service-connected] diagnosis of schizophrenia." R. at 300-01. The following month, the appellant submitted another statement and additional evidence in support of her claims. R. at 274-77. The RO then denied her claims once more. R. at 279.

In January 1993, the appellant again requested an increased disability rating for her service-connected schizophrenia. R. at 287. In March 1993, the RO denied that claim. R. at 306-07. In July 1993, the RO received some of the appellant's SSA records. R. at 309-28. One of those documents, dated November 1988, recommended that the appellant be declared permanently and totally disabled by SSA because of her schizophrenia. R. at 318. That document further indicated that the appellant's illness markedly interfered with her daily living activities and social functioning, frequently interfered with her ability to concentrate at work, and resulted in episodes of deterioration in work-like settings. R. at 324. The appellant submitted a new claim for TDIU later that same month. R. at 327-28.

In August 1995, the appellant submitted another statement and additional evidence in support of her claims. R. at 332-35. Included among that evidence were two VA medical reports. R. at 333-34. The first report, dated July 12, 1995, was drafted by Kathryn Dowdle, a registered nurse and certified clinical specialist who had treated the appellant at the Tuscaloosa VAMC in the fall of 1988. R. at 208, 334. Ms. Dowdle opined that the appellant "[wa]s unable to compete for or maintain gainful employment." *Id.* The second report, dated July 27, 1995, was prepared by Thomas H. McNutt, Ph.D., a VA counseling psychologist. R. at 333. Dr. McNutt also concluded that the appellant was "unemployable." R. at 333. In October 1995, the appellant received a VA mental examination. R. at 345-46. The examiner noted that the appellant described herself as "fearful," "hear[ing] voices," "ha[ving] wild thoughts," experiencing "auditory hallucinations," and "paranoid." R. at 346. The examiner further noted that the appellant had previously "tried to work" but "[wa]s unable to function." *Id.*

In April 1996, the RO denied the appellant's TDIU claim. R. at 348-49. The appellant appealed. R. at 351, 361. Eight months later, in December 1996, the appellant received a new VA mental examination. R. at 381-83. The examiner opined that the appellant "definitely" had "social and industrial impairment" and that "[i]t was very unlikely that she w[ould] be able to go back to a job where she will be gainfully employed." R. at 383.

In May 1997, the RO issued a Supplemental Statement of the Case (SOC) affirming its denial of the appellant's TDIU claim. R. at 651-52. In September 1997, the appellant received a new VA examination. R. at 744-46. During that examination, the appellant provided the examiner with a letter describing her current mental condition. R. at 745. A portion of that letter was dictated in the examiner's report:

I feel that my immediate family members, some relatives and some associates are plotting to kill me or harm me. The feelings that they are going to harm me are mentally, emotionally, and physically; therefore, I am paranoid most of my life. I try to avoid them as much as possible. I hear voices telling me that I better be careful because people are plotting to kill me. These voices are very severe at night time, therefore, I sleep in the day time and I mostly am awake at night time. I keep the radio on to help control the voices and to help me sleep a little while at night. I sometimes fear the television because the people on the TV sometimes talk to me and make me scar[ed]. I do not like to watch it because of these experiences. The voices coming from the Satanic people have caused me to fear for my life.

R. at 745. In October 1997, the RO granted the appellant a 50% disability rating for her schizophrenia, effective November 1993. R. at 750-51.

In February 1999, the Board remanded the appellant's TDIU claim and ordered the RO to, among other things, obtain the appellant's SSA records, conduct a new medical examination, and readjudicate her pending claims. R. at 989-96. In May 1999, before receiving her SSA records, VA performed the appellant's medical examination. R. at 1027-29. The examiner determined that the appellant "[wa]s totally unemployable due to her service-connected psychosis." R. at 1029. Three months later, the RO awarded the appellant a 100% disability rating for her schizophrenia, effective the date of her May 1999 VA examination. R. at 1037-38. The appellant appealed. R. at 1043-44, 1049, 1053-63, 1065-66.

In June 2000, the RO finally received the appellant's remaining SSA records (R. at 1088-1101), including a December 1994 psychiatric examination report stating that the appellant "appear[ed] capable of some form of employment, but her psychiatric history and paranoia likely

interferes with her ability to remain gainfully employed." R. at 1098-99. Later that same month, the RO received a letter from the appellant stating:

I (Allison E. Rancher) [am] requesting that the letter dated June [22, 2002,] be withdrawn and destroyed with the [NOD] for the 100% [disability rating] for paranoid schizophrenia to be rated [on the basis of] [i]ndividual [u]nemployability. In other words[,] I want to keep the rating 100% for paranoid schizophrenia[,] and I decline to have the rating change[d] to individual unemployability status. If I have cause any trouble in this matter[,] I am sorry. Therefore, I want to remain[] 100% for paranoid schizophrenia and not be granted 100[%] individual unemployability status at this time.

R. at 1107-08.

In May 2001, the Board issued the decision here on appeal. R. at 1-13. The Board found that the RO's July 1985 and March 1993 rating decisions had not been timely appealed and were, therefore, final. R. at 2-5. The Board further found that the July 12, 1995, VAMC outpatient treatment report was the first claim for an increase in the appellant's schizophrenia disability rating that VA received after the RO's March 1993 decision. R. at 6. The Board then reviewed the medical evidence of record and determined that the appellant was entitled to a 100% disability rating, effective December 11, 1996. R. at 8-9. However, the Board denied the appellant a disability rating higher than 50% prior to that date. R. at 9-12. Finally, the Board concluded that the notice provisions of the Veterans Claims Assistance Act (VCAA) of 2000, Pub. L. 106-475, § 3, 114 Stat. 2096 (codified in part at 38 U.S.C. § 5103), applied to the claim on appeal, and that the Secretary had satisfied those requirements. R. at 12-13.

II. ANALYSIS

The appellant argues that the 100% disability rating for her service-connected schizophrenia should be made effective as of the date of her discharge from service and that, in any event, the Board provided inadequate reasons or bases for assigning an effective date of December 11, 1996. Appellant's Brief (Br.) at 8-19; Appellant's Reply Br. at 1-9; Appellant's Motion (Mot.) for Reconsideration at 2-10. The appellant further argues that the Secretary did not comply with the VCAA's notice requirements or with the terms of the Board's February 1999 remand order. Br. at 19-23; Reply Br. at 10-15; Mot. at 11-14. Finally, the appellant argues that she never withdrew her

claim for TDIU. Br. at 5-6. The Secretary contends that the Board's decision is plausible and should be affirmed. Secretary's Br. at 8-29.

A. February 1984 Effective Date

The effective date of an award can generally be no earlier than the date when VA receives the claim for that particular benefit. 38 U.S.C. § 5110(a) (providing, in relevant part, that "the effective date of an award . . . shall be fixed in accordance with the facts found, but shall be no earlier than the date of receipt of application therefor"); *see also* 38 C.F.R. § 3.400 (2006). However, an earlier effective date can be granted if a claim requests increased compensation or is filed within 1 year of discharge from service. *See* 38 U.S.C. § 5110(b)(1) (authorizing an effective date as of the date of discharge for claims filed within one year therefrom), (2) (authorizing an effective date up to one year prior to the filing of a claim for increased compensation); 38 C.F.R. §§ 3.400(b)(ii)(B)(2), (o). The Board's determination of the effective date for a service-connected disability is a finding of fact that the Court reviews under the "clearly erroneous" standard. 38 U.S.C. § 7261(a)(4); *see Evans v. West*, 12 Vet.App. 396, 401 (1999); *Hanson v. Brown*, 9 Vet.App. 29, 32 (1996). "A factual finding is "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." *Hersey v. Derwinski*, 2 Vet.App. 91, 94 (1992) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

The appellant first argues that the effective date of the 100% disability rating for her service-connected schizophrenia should be February 1984, because she filed her claim within 1 year of her discharge from service and her schizophrenia was and has been totally disabling since that time. *See* 38 U.S.C. § 5110(b)(1); 38 C.F.R. § 3.400(b)(ii)(B)(2). The appellant further argues that none of the RO's decisions on her initial claim are final, because she either submitted new and material evidence, *see* 38 C.F.R. § 3.156(b) (2006); *see also Muehl v. West*, 13 Vet.App. 159, 161-62 (1999), or filed an NOD within 1 year of those decisions. *See* 38 U.S.C. § 7105; 38 C.F.R. § 20.302(a) (2007). In other words, the appellant argues that her initial claim has been pending for more than 23 years; that the Secretary's final disposition of that claim is before the Court on direct appeal; and that the evidence of record justifies the assignment of a February 1984 effective date. The Court disagrees.

The appellant relies heavily on 38 C.F.R. § 3.156(b). That regulation states, in relevant part, that "[n]ew 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." *Id.* In *Muehl v. West*, this Court held that the RO's receipt of § 3.156(b) compliant evidence abates the finality of a prior decision on a claim and tolls the time for filing an appeal until a new decision has been issued. 13 Vet.App. at 161-62. The appellant, citing § 3.156(b) and *Muehl, supra*, argues that the Board erred by finding that her initial claim has already been subject to a final decision, namely, the RO's July 1985 decision. According to the appellant, the RO received new and material evidence—her July 1986 vocational rehabilitation report—within 1 year of that decision; therefore, the July 1985 RO decision never became final.

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); *Muehl, supra*. 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. See *Ingram v. Nicholson*, 21 Vet.App. 232, 243 (2007) (holding "that a reasonably raised claim remains pending until there is a recognition of the substance of the claim in an RO decision from which a claimant could deduce that the claim was adjudicated or an explicit adjudication of a subsequent 'claim' for the same disability"); see also *Gonzales v. West*, 218 F.3d 1378, 1380-81 (Fed. Cir. 2000) (holding that the RO is presumed to have considered all of the evidence of record absent some showing to the contrary). The appellant did not file an NOD within 1 year of any of those decisions. Cf. *Myers v. Principi*, 16 Vet.App. 228, 236 (2002). Moreover, the appellant did not submit any evidence within 1 year of the RO's December 1988 decision, the final appealable decision in that series and the only one that could be subject to tolling under § 3.156(b). 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. See 38 U.S.C. § 5109A; 38 C.F.R. § 3.105(a); see also *Disabled Am. Veterans v. Gober*, 234 F.3d 682, 696-98 (Fed. Cir. 2000),

cert. denied, 532 U.S. 973 (2001). 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. *See Sondel v. Brown*, 6 Vet.App. 218, 220 (1994).

B. Reasons or Bases

The Board is required to include in its decision a written statement of the reasons or bases for its findings and conclusions on all material issues of fact and law presented on the record; that statement must be adequate to enable an appellant to understand the precise basis for the Board's decision, as well as to facilitate informed review in this Court. *See* 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995); *Gilbert v. Derwinski*, 1 Vet.App. 49, 56-57 (1990). To comply with this requirement, the Board must analyze the credibility and probative value of the evidence, account for the evidence it finds persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant. *See Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff'd*, 78 F.3d 604 (Fed. Cir. 1996) (table); *Gabrielson v. Brown*, 7 Vet.App. 36, 39-40 (1994); *Gilbert, supra*.

The Board did not provide adequate reasons or bases in support of its finding that the RO's March 1993 decision was final. R. at 5, 306-07. The evidence of record shows that the RO received some of the appellant's SSA records in July 1993, approximately four months after the March 1993 rating decision. R. at 309-28. The Board did not discuss whether those records were new and material evidence, the receipt of which rendered the March 1993 RO decision nonfinal and tolled the time for filing an appeal until a new decision had been issued. *See Muehl, supra*, 38 C.F.R. § 3.156(b). The Court cannot make that substantially factual finding in the first instance, *see Elkins v. West*, 12 Vet.App. 209, 217 (1999) (en banc), and the Board's decision cannot be meaningfully reviewed in the absence thereof. Indeed, if the March 1993 RO decision was not final, the July 1991 hospital report from the Tuscaloosa VAMC appears to be the claim that initiated the second phase of this adjudication. *See* 38 C.F.R. § 3.157(b) (2006); *Servello v. Derwinski*, 3 Vet.App. 196, 200 (1992); *Norris v. West*, 12 Vet.App. 413 (1999).¹ Accordingly, the Court holds that the Board did

¹If the Board determines that the RO's March 1993 decision was not final, the Board must evaluate the evidence from July 1991 through March 1993 to determine which, if any, of the RO decisions issued during that period were properly appealed.

not support its finding that the RO's March 1993 decision was final with adequate reasons or bases. R. at 5, 306-07.

Moreover, the finality of the March 1993 decision is relevant, because the Board's finding that the appellant's schizophrenia first became 100% disabling on December 11, 1996, is also not supported by adequate reasons or bases. 38 U.S.C. § 5110; 38 C.F.R. § 3.400. The Secretary's regulations state that "[w]hen evaluating a mental disorder, . . . [t]he rating agency shall assign an evaluation based on all the evidence of record that bears on occupational and social impairment rather than solely on the examiner's assessment of the level of disability at the moment of the examination." 38 C.F.R. § 4.126(a) (2007) (emphasis added). However, the Board only discussed the medical evidence from December 1994 onward (R. at 9-12), even though the record contained older evidence that is relevant to the possible disability rating and effective date awarded for her service-connected schizophrenia.

Under the version of the schizophrenia rating schedule used by the Board, a 100% disability rating was warranted for "[a]ctive psychotic manifestations of such extent, severity, depth, persistence or bizarreness as to produce total social and industrial inadaptability," and a 70% disability rating was warranted for "lesser symptomatology such as to produce severe impairment of social and industrial adaptability." 38 C.F.R. § 4.132, DC 9201-05 (1988) (rating schedule for schizophrenic disorders in effect from February 3, 1988, until November 7, 1996; see 53 Fed. Reg. 21-01 (Jan. 4, 1988); 61 Fed. Reg. 52695-02 (Oct. 8, 1996)). The record contains evidence well before December 1994 that is relevant to that rating provision. For instance, the Tuscaloosa VAMC's March 1985 discharge summary states that the appellant was "unable to engage in stressful employment." R. at 140. Similarly, the VA vocational rehabilitation counselor's fall 1985 notes state that the appellant's employability was "materially hinder[ed]" by her "service[-]connected disability." R. at 147-49. Likewise, the January 1986 vocational rehabilitation report provides documentary evidence of the appellant's erratic behaviors and inability to function in social settings. R. at 154-55. Another VA report, from July 1986, explicitly states that the appellant "[wa]s too psychotic to . . . train or maintain employment." R. at 165. Additionally, a July 1988 VA neuropsychiatric examination report characterizes the overall severity and degree of social and industrial impairment caused by her condition as moderate to severe. R. at 196-97. Finally, a November 1988 SSA report concludes that the appellant's schizophrenia markedly interfered with

her daily living activities and social functioning, frequently interfered with her ability to concentrate at work, and resulted in deterioration in work-like settings. R. at 324. The Board had an obligation to carefully consider that evidence in determining the earliest factually ascertainable point at which she became 100% disabled, even if such a disability rating could not, as a matter of law, be made effective as of that date. *See* 38 C.F.R. § 4.126(a) (2007).

Moreover, the record contains other unreviewed evidence that bears even more directly upon the effective date awarded if the RO's March 1993 decision was not final. For instance, a July 1991 Tuscaloosa VAMC hospitalization report notes that the appellant complained of sleeplessness, depression, and auditory hallucinations and opines that she was "[u]nemployable." R. at 226-28. Similarly, a September 1991 VA examination report notes that "her ability to work appears questionable." R. at 244. A Tuscaloosa VAMC report from two months later offers an even more definitive conclusion, opining that the appellant was "unemployable because of her diagnosis of schizophrenia." R. at 300-01. The Board did not consider any of that evidence in the decision here on appeal, and the Court cannot conclude that the appellant would not be entitled to a 100% disability rating, or a staged 70% disability rating for some portion of time, if a review thereof is in order. *See* 38 C.F.R. § 4.132, DC 9201-05 (1988). For these reasons, the Court holds that the Board's reasons or bases error warrants a remand.

C. The Adequacy of VA's May 1999 Medical Examination

The Secretary must substantially comply with the terms of a Board remand. *See Dymont v. West*, 13 Vet.App. 141, 146-47 (1999); *Stegall v. West*, 11 Vet.App. 268, 271 (1998). In February 1999, the Board remanded the appellant's claim and ordered the RO to obtain the appellant's SSA, VA, and private medical records. R. at 992-93. The Board further instructed the RO to place those records in the appellant's claims file, to schedule a new VA examination once all of those records had been received, and to make the entire claims file available to the examiner for review. R. at 994. Contrary to the terms of the Board's remand, VA performed the appellant's new medical examination in May 1999 (R. at 1027-29), one month before her remaining SSA records were received. R. at 1088-1101; *see Green v. Derwinski*, 1 Vet.App. 121, 124 (1991) (holding that an adequate examination requires a review of the claimant's medical records and prior medical history). Those records included a newly disclosed December 1994 psychiatric examination opining as to the severity of the appellant's condition and her employability. R. at 1098-99. VA violated the Board's

remand order by performing the appellant's new medical examination before receiving her SSA records, and the Court cannot excuse that violation because those records included newly disclosed and potentially relevant medical evidence. *See Talley v. Brown*, 6 Vet.App. 72, 74 (1993); *Schafraht v. Derwinski*, 1 Vet.App. 589, 593-94 (1991). For these reasons, the Court holds that the Board erred in failing to ensure substantial compliance with the terms of its February 1999 remand order, thereby requiring a new examination of the appellant.

D. VCAA Notice

The appellant argues that she did not receive adequate VCAA notice. However, in *Dingess v. Nicholson*, the Court held that "the statutory scheme contemplates that once a decision awarding service connection, a disability rating, and an effective date has been made, section 5103(a) notice has served its purpose, and its application is no longer required because the claim has already been substantiated." 19 Vet.App. 473, 490 (2006). The RO's August 1999 decision granted the appellant's claim for a 100% disability rating and assigned an effective date. R. at 1037. Thus, her claim was substantiated prior to the VCAA's enactment, and the Secretary had no duty to provide notice under the statute. *Dingess*, 19 Vet.App. at 493.

E. Withdrawal of TDIU Claim

The appellant argues that she did not withdraw her appeal from the RO's denial of her TDIU claim. *See* 38 C.F.R. § 20.204 (2007). An appeal may be withdrawn with respect to any or all issues. *Id.* at (a). However, unless made on the record at a hearing, a withdrawal must be submitted in writing and "include the name of the veteran, the name of the claimant or appellant if other than the veteran[,] . . . the applicable Department of Veterans Affairs file number, and a statement that the appeal is withdrawn." *Id.* at (b)(1). VA has an obligation to liberally construe any document that purports to withdraw an appeal. *See Kalman v. Principi*, 18 Vet.App. 522, 524 (2004). The Court reviews the Board's determination that a document was sufficient to withdraw an appeal under the "clearly erroneous" standard. *Id.* (citing 38 U.S.C. § 7261(a)(4)).

The Board's finding that the appellant's TDIU claim had been withdrawn is not clearly erroneous. As noted in Part I, *supra*, the RO, in June 2000, received a letter from the appellant (R. at 1107-08), which included her name, claim number, and a statement requesting that her NOD from the RO's decision on her TDIU claim "be withdrawn and destroyed." *Id.* Though the appellant argues on appeal that she "did not intend to withdraw her TDIU claim," (Br. at 5) (emphasis in

original), the Court cannot conclude that the Board's contrary finding was in error given the plain and unambiguous language used in her June 2000 letter. The Court, therefore, rejects the appellant's argument on this issue.

E. Remand

Given this disposition, the Court need not address the appellant's remaining arguments. The appellant has not demonstrated that she would be prejudiced by a remand of this matter without consideration thereof or that the asserted errors could not be properly raised or eventually remedied on remand to the Board. *See Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991) (remand is meant to entail critical examination of justification for decision; the Court expects that the Board will reexamine the evidence of record, seek any other necessary evidence, and issue a timely, well-supported decision). On remand, the appellant is free to submit additional evidence and argument, including the arguments raised in his briefs to this Court, in accordance with *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order), and the Board must consider any such evidence or argument submitted. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002). The Board shall proceed expeditiously, in accordance with 38 U.S.C. §§ 5109B, 7112 (West Supp. 2007) (requiring Secretary to provide for "expeditious treatment" of claims remanded by Board or Court).

III. CONCLUSION

After consideration of the parties' briefs and a review of the record, those portions of the Board's May 22, 2001, decision that denied an effective date prior to December 11, 1996, for the 100% disability rating awarded for the appellant's service-connected schizophrenia and denied her request for a higher disability rating for that condition prior to December 11, 1996, are VACATED and those matters are REMANDED for further proceedings consistent with this decision. The Board's May 22, 2001, decision is otherwise AFFIRMED.

DATED:

OCT 24 2007

Copies to:

John F. Cameron, Esq.

VA General Counsel (027)

ADDENDUM

2

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 02-1142

ALLISON E. RANCHER, APPELLANT,

v.

GORDON H. MANSFIELD,
ACTING SECRETARY OF VETERANS AFFAIRS, APPELLEE.

J U D G M E N T


The Court has issued a decision in this case. The time allowed for motions under Rule 35 of the Court's Rules of Practice and Procedure has expired.

Under Rule 36, judgment is entered this date.

DATED: **NOV 16 2007**

FOR THE COURT:

NORMAN Y. HERRING
Clerk of the Court

By: Willette Cash / 
Deputy Clerk

Copies to:

John F. Cameron, Esq.

VA General Counsel (027)

ADDENDUM

3

United States Court of Appeals for Veterans Claims

DOCKET

Docket No: 02-1142

Allison E. Rancher,

Appellant,

V.

Secretary of Veterans Affairs,

Appellee.

Appearances for Appellant

Appearances of Appellee

John F. Cameron, Esq.
 P.O. Box 240666
 Montgomery, AL 36124-0666
 U.S.
 334-502-9500

Michael J. Burdick, Esq.
 202-639-4822

BVA Information

Date

Explanation

Received

Disbursed

BVA File No.: 29 708 311

BVA Decision Mail Date: 5/15/2002

United State Court of Appeals for Veterans Claims

Allison E. Rancher

Docket No: 02-1142

| Date | Filings and Proceedings | Action | Date |
|------------|---|--------|-----------|
| 7/24/2002 | Notice of Appeal (STYGLA) (STYGLA) | | |
| 7/24/2002 | Fee Agreement (STYGLA) (STYGLA) | | |
| 7/24/2002 | Mo to waive the filing fee (M-7/24/2002) (DESHAP) | | |
| 7/24/2002 | Appearance by John F. Cameron, Esq., as attorney for the appellant (STYGLA) (M-7/25/2002) (DESHAP) | | |
| 7/25/2002 | Clerk's order granting the appellant's motion of 7-24-2002 to waive filing fee (DESHAP) | | |
| 7/25/2002 | Notice of Docketing or bva dec by 8-26-02; dr by 9-23-02 (M-7/25/2002) (DESHAP) | | |
| 7/26/2002 | Copy of BVA Decision (STYGLA) (M-7/26/2002) (COLVINB) | | |
| 9/11/2002 | Appearance of Cristine D. Senseman attorney for the appellee (M-9/11/2002) (COLVINB) | | |
| 9/11/2002 | Mot of appellee to dismiss and to stay fur proceedings (M-9/11/2002) (COLVINB) | CLS | 9/12/2002 |
| 9/17/2002 | Ord that the Sec by 10/17/02, file a preliminary record evidencing that the BVA's 08/01/01, denial of the appellant's mot for reconsideration was mailed to the appellant and her representative. It is fur ord that proceedings on this appeal are stayed pending fur ord of the Court (LANEJ) (COLVINB) | | |
| 10/17/2002 | Appearance of Gabrielle L. Clemons non-attorney for the appellee (M-10/17/2002) (COLVINB) | | |
| 10/17/2002 | Appellee's response to the 09/17/02 ord of the Court (M-10/17/2002) (COLVINB) | GM/CLS | 11/7/2002 |
| 11/13/2002 | Ord that the appellant file a response to the sec's mot by 12/13/02 (LANEJ) (COLVINB) | | |
| 12/12/2002 | Appellant's unopposed mot to ext time until 01/13/03 to file a response to the appellee's mot to dismiss (M-12/12/2002) (COLVINB) | | |
| 12/18/2002 | Clerk's ord granting appellant's 12/12/02 mot until 1/13/03 to file a response to the appellee's mot to dismiss (COLVINB) (COLVINB) | | |
| 1/15/2003 | Appellant's unopposed mot to ext time until 01/20/03 to file response to the appellee's mot to dismiss (M-1/15/2003) (COLVINB) | | |
| 1/15/2003 | Clerk's ord granting appellant's 01/13/03 mot until 01/20/03 to file a response to the appellee's mot to dismiss (COLVINB) (COLVINB) | | |

United State Court of Appeals for Veterans Claims

Allison E. Rancher

Docket No: 02-1142

| Date | Filings and Proceedings | Action | Date |
|-----------|--|--------|-----------|
| 1/16/2003 | Appellant's response to the Sec's mot to dismiss (M-1/16/2003) (COLVINB) | GM/CLS | 1/17/2003 |
| 1/23/2003 | Ord, appellee file a preliminary record by 2/12/03 (JWN) (MCCOYA) | | |
| 2/12/2003 | Appellee's response to the 01/23/03 ord of the court (M-2/12/2003) (COLVINB) | GM/CLS | 2/13/2003 |
| 3/27/2003 | Ord that the appellee's motion is granted; this appeal is dismissed for lack of jurisdiction (revoked per order dated 6/19/03) (DIVERS) (MEYERK) | | |
| 4/15/2003 | Mo of appellant for reconsideration or panel review (M-4/14/2003) (MEYERK) | CLS | 4/16/2003 |
| 6/19/2003 | Ord that the appellant's motion for reconsideration is granted; Court's order of 3/27/03, is revoked and this appeal is reinstated; appellee file DR by 7/21/03 (DIVERS) (MEYERK) | | |
| 7/21/2003 | Appearance of Amy S. Gordon attorney for the appellee. (M-7/21/2003) (COLVINB) | | |
| 7/21/2003 | Appellee's unopposed mot for a stay of proceedings (M-7/21/2003) (COLVINB) | | |
| 7/21/2003 | Appellee's opposed mot for partial remand (-7/21/2003) (COLVINB) | ANST | 8/11/2003 |
| 7/24/2003 | Clerk's ord granting appellee's mot for a stay of proceedings pending fur ord of the court (BMC) (COLVINB) | | |
| 8/5/2003 | RECEIVED: Mo of appellant to ext time until 08/23/03 to file a response to the appellee's mot for partial remand (F-8/5/2003) (COLVINB) | VM | 8/7/2003 |
| 8/13/2003 | Mot of appellant to ext time until 08/23/03 to file a response to the appellant's mot for remand (M-8/13/2003) (COLVINB) | | |
| 8/13/2003 | Clerk's ord granting appellant's 08/05/03 mot until 08/23/03 to file a response to the appellee's mot for remand (BMC) (COLVINB) | | |
| 8/19/2003 | Appellant's response to the appellee's mot for remand (F-8/19/2003) (COLVINB) | GM/CLS | 8/20/2003 |
| 9/5/2003 | Ord that the stay is dissolved. It is further ord that the Secretary's mo for remand is denied without prejudice to reassert the same arguments, if appropriate, in response to the appellant's brief. It is further ord that the Secretary shall file the DOR within 14 days after the date of this ord (DIVERS) (MONTGI) | | |

United State Court of Appeals for Veterans Claims

Allison E. Rancher

Docket No: 02-1142

| Date | Filings and Proceedings | Action | Date |
|------------|---|-----------|------------|
| 9/12/2003 | Appearance of Michael J. Burdick attorney for the appellee (M-9/12/2003) (COLVINB) | | |
| 9/12/2003 | Mot of appellee to ext time until 11/03/03 to file DR (M-9/12/2003) (COLVINB) | | |
| 9/15/2003 | Clerk's ord granting appellee's 09/12/03 mot until 11/03/03 to file DR (revoked per order dated 9/17/03) (BMC) (COLVINB) | | |
| 9/16/2003 | Appellant's opposition to appellee's mo for ext of time until 11/3/03 (M-9/16/2003) (MEYERK) | CLS/IVERS | 9/17/2003 |
| 9/17/2003 | Ord that the Clerk's 9/15/03, grant of the motion is revoked; the motion is submitted to the Court for decision (KM) (MEYERK) | | |
| 9/29/2003 | Ord that the appellee's motion for ext of time to file DR until 11/3/03, is granted (DIVERS) (MEYERK) | | |
| 11/3/2003 | Designation of Record (M-11/3/2003) (COLVINB) | | |
| 12/3/2003 | RECEIVED: Appellant's unopposed mot to ext time until 12/10/03 to file a CDR (M-12/3/2003) (COLVINB) | APS | 12/5/2003 |
| 12/9/2003 | Notice of nonconforming papers to the appellant (mot to extend time R26(b)(2)(C)(D). The proceedings are stayed for 14 days from the date of this notice (M-12/9/2003) (COLVINB) | | |
| 12/10/2003 | RECEIVED: Counter Designation of Record (M-12/10/2003) (MEYERK) | CLS | 12/12/2003 |
| 12/19/2003 | Mo of appellant to ext time to file a CDR until 12/10/03 (M-12/19/2003) (MEYERK) | | |
| 12/23/2003 | Clerk's ord granting appellant's mo for ext of time until 12/10/03 (MEYERK) (MEYERK) | | |
| 12/23/2003 | Counter Designation of Record (MEYERK) | | |
| 1/6/2004 | Ord conf on 1/13/04, at 10am, by Richard A. Bednar (RAB) (TOBESS) | CLS | 1/6/2004 |
| 1/13/2004 | Conference held (-1/13/2004) (MCCOYA) | | |
| 1/14/2004 | Ord appellee file the ROA by 2/13/04 (AM) (MCCOYA) | | |
| 2/9/2004 | Appellee's mo to exclude on Rules 10 and 27 record dispute (M-2/9/2004) (MCCOYA) | CLS/IVERS | 2/26/2004 |
| 2/11/2004 | Appellee's opposed mo for stay of proceedings pending ruling on mo to exclude (M-2/11/2004) (MCCOYA) | CLS/IVERS | 2/26/2004 |
| 2/24/2004 | Appellant's response to appellee's mo to exclude (M-2/24/2004) (MONTGI) | CLS/IVERS | 2/26/2004 |
| 3/2/2004 | Ord that the Sec's mot to exclude is granted. It is fur ord that the sec transmit the ROA within 14 days after the date of this ord. It is fur ord that the Sec's mot to stay proceedings is denied as moot (LANEJ) (COLVINB) | | |

United States Court of Appeals for Veterans Claims

Allison E. Rancher

Docket No: 02-1142

| Date | Filings and Proceedings | Action | Date |
|------------|--|----------|-----------|
| 3/16/2004 | Record on Appeal (M-3/16/2003) (COLVINB) | | |
| 3/16/2004 | Notice to File Brief within 60 days (M-3/16/2004) (COLVINB) | | |
| 3/31/2004 | RECEIVED: Appellee's errata to record on appeal (M-3/31/2004) (COLVINB) | | |
| 4/1/2004 | Ord that the Court will initiate a tele conf on 04/20/04, at 2:00 PM EDT. By Charles Shin, Esq., (CLS). (CS) (COLVINB) | CLS | 4/1/2004 |
| 4/20/2004 | Conference held (M-4/20/2004) (COLVINB) | | |
| 5/14/2004 | Appellant's unopposed mot to ext time until 06/14/04 to file brief (M-5/14/2004) (COLVINB) | | |
| 5/14/2004 | Clerk's ord granting appellant's 05/14/04 mot until 06/14/04 to file brief (BMC) (COLVINB) | | |
| 6/14/2004 | Appellant's Brief (M-6/14/2004) (COLVINB) | | |
| 8/12/2004 | Appellee's unopposed mot to ext time until 09/15/04 to file brief (-8/12/2004) (COLVINB) | | |
| 8/12/2004 | Clerk's ord granting appellee's 08/10/04 mot until 09/15/04 to file brief (BMC) (COLVINB) | | |
| 9/15/2004 | Appellee's Brief (M-9/15/2004) (COLVINB) | | |
| 9/28/2004 | Mo to ext time to file reply brief until 10/29/04 (M-9/28/2004) (GASKIA) | | |
| 9/29/2004 | Clerk's ord granting appellant's 9/28/04 mo until 10/29/04 (GASKIA) (GASKIA) | | |
| 10/29/2004 | Appellant's Reply Brief (M-) (WILLIR) | CLS | 11/5/2004 |
| 5/9/2005 | Assigned to Judge Lance (TOBESS) | | |
| 8/31/2006 | Supple authorities under Rule 30 (b) of the appellant (M-8/31/2006) (COLVINB) | JLANCE | 9/7/2006 |
| 9/1/2006 | Supple authorities under Rule 30 (b) of the appellant (M-9/1/2006) (COLVINB) | JLANCE | 9/8/2006 |
| 9/13/2006 | Ord that the BVA decn is affirmed (withdrawn per memo decn dated 10/24/07) (ALANCE) (MEYERK) | JUDGMENT | 10/4/2006 |
| 10/4/2006 | Mot of appellant for reconsideration and panel review (M-10/4/2006) (MEYERK) | CLS | 10/5/2006 |
| 10/24/2007 | Memo Decn that the 9/13/06, decn is withdrawn and this decn is issued in its stead; BVA decn is vacated and remanded in part; affirmed in part (ALANCE) (DESHAP) | | |
| 11/16/2007 | Judgment (WCASH) | MANDATE | 1/15/2008 |
| 1/11/2008 | Appellant's Notice of Appeal to the USCA for the Fed. Circuit (M-1/11/2008) (WCASH) | | |

United States Court of Appeals for Veterans Claims

Allison E. Rancher

Docket No: 02-1142

| Date | Filings and Proceedings | Action | Date |
|-----------|---|--------|-----------|
| 1/11/2008 | RECEIVED: Mot to waive the filing fee (Federal Circuit Court) (WCASH) | | |
| 1/15/2008 | Appellant's Notice of Appeal transmitted to USCA for the Fed. Circuit (WCASH) | TRACK | 1/14/2009 |

END OF DOCKET

1/15/2008 4:20:39 PM

True Copy
By: 
Deputy Clerk

ADDENDUM

4

| | | | | | | |
|---|------------------|-----------------|------------------|---|---------------------------|---|
| PATIENT'S NAME (Last, first, middle initials) RANCHER, Alison | AGE 27 | SEX F | RACE B | SOCIAL SECURITY NO. 417-84-5098 | CLAIM NO. c SCA | NAME OF FACILITY VAMC, Tusc., AL. |
|---|------------------|-----------------|------------------|---|---------------------------|---|

DIAGNOSES: (List the principal diagnosis. The principal diagnosis is that condition established after study to be chiefly responsible for occasioning the admission of the patient. Then, in order of clinical importance, list other diagnoses, all conditions, or situations which are treated or develop subsequently which affect the length of stay. Prefix the principal diagnosis with an alpha character "P". Prefix the diagnosis responsible for the major part of the length of stay (DXIS) with an alpha character "X". DO NOT ABBREVIATE DIAGNOSES.)

1. Paranoid schizophrenia.
2. Calculus.

29-708.311

| |
|------------------------|
| DIAGNOSTIC CODE |
| |

PERTINENT CLINICAL DIAGNOSES NOTED BUT NOT TREATED (Include autopsy diagnoses not listed as clinical above)

OPERATIONS PROCEDURES PERFORMED AT THIS FACILITY DURING CURRENT ADMISSION

| | |
|-------------|----------------------------------|
| DATE | OPERATION PROCEDURES CODE |
| | |

SUMMARY (Brief statement should include, if applicable; history, pertinent physical findings, provisional diagnosis; course in hospital, treatment given; condition at release; date patient is capable of returning to full employment, period of convalescence, if required; recommendations for follow-up treatment including date of first VA outpatient visit, where applicable, medications furnished at release, any specific instructions given to the patient and/or family, including physical activity limitations, competency opinion when required, rehabilitation potential; and, name of Nursing Home or other receiving facility, if known)

CHIEF COMPLAINT: Patient was seen in the Anniston Medical Center. She was striking out, was abusive, and was uncommunicative. She had an acute psychotic episode with bizarre behavior.

HISTORY OF THE PRESENT ILLNESS: The patient had a previous admission in the Army Base hospital in California for 2 months while she was still on active duty. At that time it was stated, "I gained a lot of stress trying to be promoted to captain, and had a nervous breakdown." She was later returned to active duty. However, she felt that someone was always watching her, and she decided to be discharged from the service. She was never homicidal or suicidal. She experienced auditory hallucinations, where she hears little voices on the telephone, and was frightened to go into her bedroom. She thought that there may be somebody there in her bedroom. Also, she was frightened to get her mail out of the mail box. She was also delusional about the television, and felt that the television is able to control her. No alcohol or drug problem. The patient was preoccupied with religion, and reads the Bible a lot. This is the first admission to this facility. Prior to admission she was acting strange and was argumentative, and has been dieting, and lost about 10 lb. in a week. She was not eating right. She was mixed up, and stated, "I love you even though you killed Tony." Tony was a boyfriend of patient's who married someone else, and apparently patient did not get over this.

| | | | | | | | |
|----------------------------------|----------------------------------|-----------------------------------|-----------------------|---------------------|------------------------|--|---|
| ADMISSION DATE 1-29-85 | DISCHARGE DATE 3-20-85 | TYPE OF RELEASE OPT-NSC | INPATIENT DAYS | ABSENCE DAYS | WARD NO. 40A | SIGNATURE PHYSICIAN KAMAL NAGI, M.D. | SIGNATURE (Initials of approving) [Signature] |
|----------------------------------|----------------------------------|-----------------------------------|-----------------------|---------------------|------------------------|--|---|

10

relationship. The patient acted bizarre, and was bumping her head on the floor and biting her sister, acting bizarre.

PERTINENT PHYSICAL AND TEST FINDINGS: History and physical examination and mental status examination showed a young woman who was in bed; not responding to questions, closing her eyes in a catatonic like state, with body odor, and a labile affect, was somewhat inappropriate, mood labile. The patient denied suicidal thoughts, plan, or intent. It was difficult for her to concentrate because of preoccupation with internal stimuli. She was blocking at times, and believed that certain people were following her. She was also having thought insertion and broadcast, and auditory and olfactory hallucinations. Physical examination showed mild obesity, and she was acutely psychotic, otherwise no other findings. The laboratory work-up showed drug screening for urine negative. Chest x-ray showed a large calcified paratracheal node present. Lung fields are clear. T3 and T4 and FTI was all WNL. Chemistry profile was also normal. EKG was normal.

COURSE IN HOSPITAL: Patient on admission was started on Haldol and Cogentin, and was observed for about 2 days. Patient was not found to be of any suicidal risk, and was removed from SNO to Group III with observation for behavior, and then to open ward, and referred to the LAPT program, also to RMS to occupy his time, to stabilize mental condition, and to improve interpersonal relationships, and decrease paranoid delusions, and to help with compliance with treatment, and prepare her for discharge. Haldol was further decreased to 500 mg. h.s. because patient developed some side reactions. On 2-12-85, patient was in total remission, and was pleasant, cooperative, and the thought disorder was under total control with medication. The patient recovered very well in a very short time, and was in remission. The family showed interest in having her home, so she was approved for a 14 day authorized absence on Haldol 5 mg. h.s. However, patient was returned after 3 days because of side effects, and wanted to go back on leave after getting some medication for akathisia, so Valium 2 mg. t.i.d. and Cogentin 2 mg. q. a.m. were prescribed. On 2-18-85, the patient got a prescription from the on duty physician, who discontinued Haldol and put her on Thorazine 50 mg. t.i.d. for the rest of the authorized absence, and also Benadryl 25 mg. h.s. The patient returned back, and was reported to be delusional and paranoid. He was started on Mellaril which was increased to 800 mg. daily. On 2-28-85, he remained hyperactive, aggressive, with very poor insight, and was thought to have an affective component of her illness. Lithium work-up was ordered. She was started on Thorazine and neuroleptic level ordered. On 3-4-85, patient showed a lot of improvement in her overall function, and moved to Group I, and resumed her RMS assignment. On 3-8-85, she was approved for open ward, and was not

CLINICAL RECORD

Report on DISCHARGE SUMMARY

or

Continuation of S. F. 10-1000*(Strike out one line) (Specify type of examination or data)*

29-708 311

(Sign and date)

hallucinating, and was informed that she lost her job. The patient was able to cope with that. She said that she would go home after she gets well, and start looking for work. She was referred to psychodrama, and the patient continued to make improvement, and requested a pass, and did well after she came back. On 3-19-85, the patient was staffed, and I called her mother, who was very pleased with the patient's progress. Patient reached maximum hospital benefit, stabilized on her medication with no side effects, sleep and appetite were good, and she requested a discharge, and was approved for discharge, and follow-up on an outpatient basis.

DISCHARGE PLANS AND AFTERCARE: She was discharged OPT-NSC, Tuscaloosa VAMC, Psychiatry, Dr. Nagi, and Mental Hygiene Clinic, effective 3-20-85.

DISCHARGE MEDICATION: Thorazine 200 mg. noon and 4:30 and h.s.

COMPETENCY: She was considered to be competent.

EMPLOYABILITY: She is unable to engage in stressful employment at this time.

Funds were released.

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)

REGISTER NO.

WARD NO.

RANCHER, Alison VAMC, Tusc., AL.
417-84-5096 D: 3-25-85
40A T: 3-26-85 rsc

REPORT ON _____ or CONTINUATION OF _____

STANDARD FORM 507

General Services Administration and
Interagency Committee on Medical Records
FPMR 101-11.90 6-3
October 1975 507-106

* U.S. Government Printing Office: 1981-241-488/4371



ADDENDUM

5

NIF 26-8E

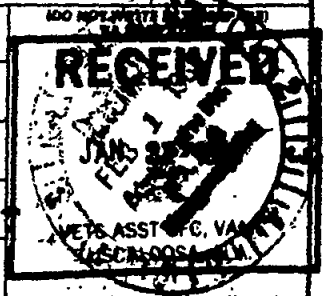
212B

FORM APPROVED
OMB NO. 2980-001



VETERAN'S APPLICATION FOR COMPENSATION OR PENSION

IMPORTANT: Read attached General and Specific Instructions before completing this form. Type, print or write plainly.



| | | |
|---|--------------------------------------|--|
| 1A. FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN Allison Elaine Ranchee | | 1B. TELEPHONE NO. (Incl. Area Code) 205-372-9738 |
| 2. MAILING ADDRESS OF VETERAN (Number and street or rural route, city or P.O., State and ZIP Code) 620 Springfield Ave Eaton AL 35462 | | 3A. VETERAN'S SOC. SECURITY NO. 417-84-5098 |
| 4. DATE OF BIRTH 8/14/57 | 5. PLACE OF BIRTH Eaton AL | 6. SEX F |
| 7. RAILROAD RETIREMENT NO. | | 3B. SPOUSE'S SOC. SECURITY NO. |

8. HAVE YOU EVER FILED A CLAIM FOR COMPENSATION FROM THE OFFICE OF WORKERS' COMPENSATION PROGRAMS? (Formerly the U.S. Bureau of Employees Compensation)

YES NO

9A. VA FILE NUMBER
C- **417 84 5098**

9B. HAVE YOU PREVIOUSLY FILED A CLAIM FOR ANY BENEFIT WITH THE VETERANS ADMINISTRATION?

NONE
 HOSPITALIZATION OR MEDICAL CARE
 WAIVER OF DEDUCTIONS
 DISABILITY COMPENSATION OR PENSION

VOCATIONAL REHABILITATION (Chap. 31)
 VETERANS EDUCATIONAL ASSISTANCE (Chaps. 33 or 34)
 WAX ORphans OR DEPENDENTS EDUCATIONAL ASSIST. (Chap. 33)

DENTAL OR OUTPATIENT TREATMENT
 OTHER (Specify)

9C. VA OFFICE HAVING YOUR RECORDS (If known)
29-708311

SERVICE INFORMATION

NOTE: Enter complete information for each period of active duty including Reservist or National Guard Status. Attach Form DD 214 or other separation papers for all periods of active duty to expedite processing of your claim. If you do NOT have your DD 214 or other separation papers check (✓) here

| 10A. ENTERED ACTIVE SERVICE | | 10B. SERVICE NO. | 10C. SEPARATED FROM ACTIVE SERVICE | | 10D. GRADE, RANK OR RATING, ORGANIZATION OR BRANCH OF SERVICE |
|-----------------------------|-------|--------------------|------------------------------------|-------|---|
| DATE | PLACE | | DATE | PLACE | |
| 9/14/60 | | 417-84-5098 | 2/184 | | US Army 1st H |
| | | | | | |

10E. HAVE YOU EVER BEEN A PRISONER OF WAR? YES NO (If "Yes," complete items 10F and 10G)

10F. NAME OF COUNTRY

10G. DATES OF CONFINEMENT

11. IF YOU SERVED UNDER ANOTHER NAME, GIVE NAME AND PERIOD DURING WHICH YOU SERVED AND SERVICE NO.

12. IF RESERVIST OR NATIONAL GUARDSMAN, GIVE BRANCH OF SERVICE AND PERIOD OF ACTIVE OR INACTIVE TRAINING DUTY DURING WHICH DISABILITY OCCURRED

13A. IF YOU ARE NOW A MEMBER OF THE RESERVE FORCES OR NATIONAL GUARD GIVE THE BRANCH OF SERVICE

13B. RESERVE STATUS
 ACTIVE RESERVE OBLIGATION
 INACTIVE

13C. RESERVE OR NATIONAL GUARD UNIT ADDRESS

14A. ARE YOU NOW RECEIVING OR WILL YOU RECEIVE RETIREMENT OR RETAINER PAY FROM THE ARMED FORCES?
 YES NO (If "Yes," complete items 14B, 14C, and 14D)

14B. BRANCH OF SERVICE

14C. MONTHLY AMOUNT \$

14D. RETIRED STATUS
 PERMANENT
 TEMPORARY DISABILITY RETIRED LIST

15A. HAVE YOU EVER APPLIED FOR OR RECEIVED DISABILITY SEVERANCE PAY FROM THE ARMED FORCES?
 YES NO (If "Yes," complete item 15B)

15B. AMOUNT \$

15A. HAVE YOU RECEIVED LUMP SUM READJUSTMENT PAY FROM THE ARMED FORCES?
 YES NO (If "Yes," complete item 15B)

15B. AMOUNT \$

MARITAL AND DEPENDENCY INFORMATION

17A. MARITAL STATUS (Check one)
 MARRIED WIDOWED DIVORCED NEVER MARRIED (If so, do not complete items 17C through 17F)

17B. SPOUSE'S BIRTHDATE

17C. NUMBER OF TIMES YOU HAVE BEEN MARRIED

17D. NUMBER OF TIMES YOUR PRESENT SPOUSE HAS BEEN MARRIED

17E. IS YOUR SPOUSE A VETERAN?
 YES NO

17F. SPOUSE'S VA FILE NO.
C-

18A. DO YOU LIVE TOGETHER?
 YES NO (If "No," complete items 18B through 18D)

18B. REASON FOR SEPARATION

18C. PRESENT ADDRESS OF SPOUSE

18D. AMOUNT YOU CONTRIBUTE TO YOUR SPOUSE'S SUPPORT MONTHLY \$

18. CHECK (X) WHETHER YOUR CURRENT MARRIAGE WAS PERFORMED BY:

CLERGYMAN OR AUTHORIZED PUBLIC OFFICIAL OTHER (Explain)

FILE PROCESSED BY TARGET
DATE 2-7-85
NAME

NOTE: Furnish the following information for each of your marriages. A certified copy of the public or church record of your CURRENT marriage is required.

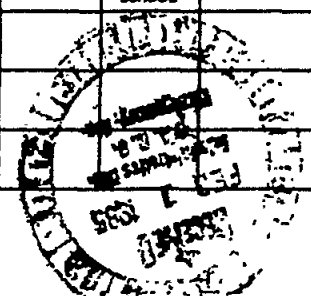
| 20A. DATE AND PLACE OF MARRIAGE | 20B. TO WHOM MARRIED | 20C. TERMINATED (Month, Day, Year) | 20D. DATE AND PLACE TERMINATED |
|--|----------------------|------------------------------------|--------------------------------|
| | | WIFE | |
| FURNISH THE FOLLOWING INFORMATION ABOUT EACH PREVIOUS MARRIAGE OF YOUR PRESENT SPOUSE | | | |
| 21A. DATE AND PLACE OF MARRIAGE | 21B. TO WHOM MARRIED | 21C. TERMINATED (Month, Day, Year) | 21D. DATE AND PLACE TERMINATED |
| | | WIFE | |

IDENTIFICATION OF CHILDREN AND INFORMATION RELATIVE TO CUSTODY

NOTE: Furnish the following information for each of your unmarried children. A certified copy of the public or church record of birth or court record of adoption is required.

| 22A. NAME OF CHILD (First, middle initial, last) | 22B. DATE OF BIRTH (Month, day, year) | 22C. SOCIAL SECURITY NUMBER OF CHILD | 22D. CHECK EACH APPLICABLE CATEGORY | | | |
|--|---------------------------------------|--------------------------------------|-------------------------------------|----------------------|--------------|--------------------------|
| | | | MARRIED PREVIOUSLY | STEPCHILD OR ADOPTED | ILLEGITIMATE | OVER 18 ATTENDING SCHOOL |
| | | | | | | |
| | | | | | | |
| | | | | | | |

22E. NAME AND ADDRESS OF PERSONS HAVING CUSTODY OF CHILD(REN), IF OTHER THAN VETERAN.



| | | |
|---|---|---|
| 22A. IS YOUR FATHER DEPENDENT UPON YOU FOR SUPPORT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," complete 23B) | 22B. NAME AND ADDRESS OF DEPENDENT FATHER | 22C. IS YOUR MOTHER DEPENDENT UPON YOU FOR SUPPORT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," complete 23D) |
| 22D. NAME AND ADDRESS OF DEPENDENT MOTHER | 22E. NAME AND ADDRESS OF NEAREST RELATIVE | 22F. RELATIONSHIP OF NEAREST RELATIVE |

NATURE AND HISTORY OF DISABILITIES

24. NATURE OF SICKNESS, DISEASE OR INJURIES FOR WHICH THIS CLAIM IS MADE AND DATE EACH BEGAN.

Nervous Condition

| | | |
|--|---|---|
| 25A. ARE YOU NOW OR HAVE YOU BEEN HOSPITALIZED OR FURNISHED DOMICILIARY CARE WITHIN THE PAST 3 MONTHS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," complete 25B and 25C) | 25B. DATES OF HOSPITALIZATION OR DOMICILIARY CARE <i>1/29/85</i> | 25C. NAME AND ADDRESS OF INSTITUTION <i>VAMC Tusesloos</i> |
|--|---|---|

NOTE: Items 26, 27, and 28 need NOT be completed unless you are now claiming compensation for a disability incurred in service.

IF YOU RECEIVED ANY TREATMENT WHILE IN SERVICE, COMPLETE THE FOLLOWING INFORMATION

| 26A. NATURE OF SICKNESS, DISEASE OR INJURY | 26B. DATES OF TREATMENT | 26C. NAME, NUMBER OR LOCATION OF HOSPITAL, FIRST-AID STATION, DRESSING STATION OR INFIRMARY | 26D. ORGANIZATION AT TIME SICKNESS, DISEASE OR INJURY WAS INCURRED |
|--|-------------------------|---|--|
| <i>Nerves</i> | <i>1983</i> | <i>ST Ord Calif. SAN FRANCISCO</i> | <i>107. ME Batts.</i> |
| | | | |
| | | | |

LIST CIVILIAN PHYSICIANS AND HOSPITALS WHERE YOU WERE TREATED FOR ANY SICKNESS, INJURY OR DISEASE SHOWN IN ITEM 26A, BEFORE, DURING OR SINCE YOUR SERVICE, AND ANY MILITARY HOSPITALS SINCE YOUR LAST DISCHARGE

| 27A. NAME | 27B. PRESENT ADDRESS | 27C. DISABILITY | 27D. DATE |
|-----------|----------------------|-----------------|-----------|
| | | | |
| | | | |
| | | | |

LIST PERSONS OTHER THAN PHYSICIANS WHO KNOW ANY FACTS ABOUT ANY SICKNESS, DISEASE OR INJURY SHOWN IN ITEM 26A, WHICH YOU HAD BEFORE, DURING OR SINCE YOUR SERVICE

| 28A. NAME | 28B. PRESENT ADDRESS | 28C. DISABILITY | 28D. DATE |
|-----------|----------------------|-----------------|-----------|
| | | | |
| | | | |
| | | | |

IF YOU CLAIM TO BE TOTALLY DISABLED (Complete Items 29A through 32E)

| | |
|----------------------------|--|
| 29A. ARE YOU NOW EMPLOYED? | 29B. IF YOU WERE SELF-EMPLOYED BEFORE BECOMING TOTALLY DISABLED, WHAT PART OF THE WORK DID YOU DO? |
| 29C. DATE YOU LAST WORKED | 29D. IF YOU ARE STILL SELF-EMPLOYED WHAT PART OF THE WORK DO YOU DO NOW? |

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|---|---|---|---|---|---|---------------|---|---|---|-----------|---|---|---|---|----------------|--|--|--|--|--|--|--|---------------|--|--|--|-----------|--|--|--|--|
| 30A. EDUCATION (Circle highest year completed) | 30B. NATURE OF AND TIME SPENT IN OTHER EDUCATION AND TRAINING | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="0"> <tr> <td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td><td>8</td> <td>1</td><td>2</td><td>3</td><td>4</td> <td>1</td><td>2</td><td>3</td><td>4</td> </tr> <tr> <td colspan="8">(GRADE SCHOOL)</td> <td colspan="4">(HIGH SCHOOL)</td> <td colspan="4">(COLLEGE)</td> </tr> </table> | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 1 | 2 | 3 | 4 | 1 | 2 | 3 | 4 | (GRADE SCHOOL) | | | | | | | | (HIGH SCHOOL) | | | | (COLLEGE) | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 1 | 2 | 3 | 4 | 1 | 2 | 3 | 4 | | | | | | | | | | | | | | | | | | |
| (GRADE SCHOOL) | | | | | | | | (HIGH SCHOOL) | | | | (COLLEGE) | | | | | | | | | | | | | | | | | | | | | |

LIST ALL YOUR EMPLOYMENT, INCLUDING SELF-EMPLOYMENT, FOR ONE YEAR BEFORE YOU BECAME TOTALLY DISABLED

| 31A. NAME AND ADDRESS OF EMPLOYER | 31B. KIND OF WORK | 31C. MONTHS WORKED | 31D. TIME LOST FROM ILLNESS | 31E. TOTAL EARNINGS |
|-----------------------------------|-------------------|--------------------|-----------------------------|---------------------|
| | | | | |
| | | | | |

LIST ALL YOUR EMPLOYMENT, INCLUDING SELF-EMPLOYMENT, SINCE YOU BECAME TOTALLY DISABLED

| 32A. NAME AND ADDRESS OF EMPLOYER | 32B. KIND OF WORK | 32C. MONTHS WORKED | 32D. TIME LOST FROM ILLNESS | 32E. TOTAL EARNINGS |
|-----------------------------------|-------------------|--------------------|-----------------------------|---------------------|
| | | | | |
| | | | | |

NET WORTH OF VETERANS AND DEPENDENTS (See attached Instructions for Items 33A to 33E inclusive)

NOTE: Items 33A through 33E should be completed ONLY if you are applying for non-service-connected pension.

| ITEM NO. | SOURCE | AMOUNTS | | | | |
|----------|---|---------|--------|--------------------|----|----|
| | | VETERAN | SPOUSE | NAME OF CHILD(REN) | | |
| | | | | | | |
| 33A. | STOCKS, BONDS, BANK DEPOSITS | \$ | \$ | \$ | \$ | \$ |
| 33B. | REAL ESTATE (Do not include residence) | | | | | |
| 33C. | OTHER PROPERTY | | | | | |
| 33D. | TOTAL DEBTS | | | | | |
| 33E. | NET WORTH | \$ | \$ | \$ | \$ | \$ |


INCOME RECEIVED AND EXPECTED FROM ALL SOURCES

NOTE: Items 34A through 36B should be completed ONLY if you are applying for non-service-connected pension.

| | | | | |
|--|--|----|---|--|
| 34A. HAVE YOU OR YOUR SPOUSE APPLIED FOR OR ARE YOU RECEIVING OR ENTITLED TO RECEIVE ANY BENEFITS FROM THE SOCIAL SECURITY ADMINISTRATION (OTHER THAN SSI) OR RAILROAD RETIREMENT BOARD? <input type="checkbox"/> YES <input type="checkbox"/> NO <small>(If "Yes," complete Items 34B through 34F as applicable)</small> | 34B. MONTHLY AMOUNT (Include Medicare Deduction) | | 34C. BEGINNING DATE | 34D. DATE YOU EXPECT BENEFITS TO BEGIN |
| | VETERAN | \$ | | |
| | SPOUSE | \$ | | |
| 34E. WILL YOU OR YOUR SPOUSE APPLY FOR EITHER BENEFIT DURING THE NEXT 12 MONTHS? <input type="checkbox"/> YES <input type="checkbox"/> NO | | | 34F. DATE OF INTENTION TO APPLY VETERAN _____ SPOUSE _____ | |

35A. HAVE YOU OR YOUR SPOUSE APPLIED FOR OR ARE YOU RECEIVING OR ENTITLED TO RECEIVE ANNUITY OR RETIREMENT BENEFITS OR ENDOWMENT INSURANCE FROM ANY OTHER SOURCE?
 YES NO (If "Yes," complete Items 35B through 35E, as applicable)

| | | | |
|---------------------|---------------------|---------------------------------|------------------------|
| 35B. MONTHLY AMOUNT | 35C. BEGINNING DATE | 35D. DATE OF INTENTION TO APPLY | 35E. SOURCE OF BENEFIT |
| VETERAN \$ | | | |
| SPOUSE \$ | | | |

| | SOURCE OF VETERAN AND DEPENDENTS INCOME <small>(Specify source for Items 36F, 37F and 38F "ALL OTHER INCOME" in Item 40, "REMARKS")</small> | AMOUNT OF INCOME | | | NAME OF CHILDREN |
|--|--|------------------|--------|----|---|
| | | VETERAN | SPOUSE | | |
| 36. AMOUNT RECEIVED FROM JAN 1 TO THE DATE YOU SIGN THIS STATEMENT | A. EARNINGS | \$ | \$ | \$ |  |
| | B. SOCIAL SECURITY (GREEN CHECK) | | | | |
| | C. OTHER ANNUITIES AND RETIREMENTS | | | | |
| | D. DIVIDENDS AND INTEREST, ETC. | | | | |
| | E. SUPPLEMENTAL SECURITY INCOME (GOLD CHECK) | | | | |
| | F. ALL OTHER INCOME | | | | |
| 37. AMOUNT EXPECTED FROM DATE YOU SIGN THIS STATEMENT TO END OF THIS CALENDAR YEAR | A. EARNINGS | | | | |
| | B. SOCIAL SECURITY (GREEN CHECK) | | | | |
| | C. OTHER ANNUITIES AND RETIREMENTS | | | | |
| | D. DIVIDENDS AND INTEREST, ETC. | | | | |
| | E. SUPPLEMENTAL SECURITY INCOME (GOLD CHECK) | | | | |
| | F. ALL OTHER INCOME | | | | |
| 38. AMOUNT EXPECTED FOR THE NEXT CALENDAR YEAR | A. EARNINGS | | | | |
| | B. SOCIAL SECURITY (GREEN CHECK) | | | | |
| | C. OTHER ANNUITIES AND RETIREMENTS | | | | |
| | D. DIVIDENDS AND INTEREST, ETC. | | | | |
| | E. SUPPLEMENTAL SECURITY INCOME (GOLD CHECK) | | | | |
| | F. ALL OTHER INCOME | | | | |

| | |
|---|----------------------------------|
| 39A. GROSS AMOUNT OF FINAL PAY RECEIVED | 39B. DATE FINAL PAY WAS RECEIVED |
| \$ | |

40. REMARKS (Summarize your statements by their applicable form number. If additional space is required, attach separate sheet and identify your statements by their form numbers)

NOTE: Filing of this application constitutes a waiver of military retired pay in the amount of any VA compensation to which you may be entitled. See instructions for Items 34A and 34 D inclusive, Retired Pay.

CERTIFICATION AND AUTHORIZATION FOR RELEASE OF INFORMATION - I certify that the foregoing statements are true and complete to the best of my knowledge and belief. I CONSENT that any physician, surgeon, dentist or hospital that has treated or examined me for any purpose, or that I have consulted professionally, may furnish to the VETERANS ADMINISTRATION any information about myself, and I waive any privilege which renders such information confidential.

| | |
|-----------------------------------|--|
| 41. DATE SIGNED <i>1/31/85</i> | 42. SIGNATURE OF CLAIMANT SIGN HERE <i>Delison E. Bencher</i> |
|-----------------------------------|--|

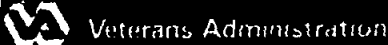
NOTE: Signature made by mark must be witnessed by two persons to whom the person making the statement is personally known, and the signatures and addresses of such witnesses must be shown.

| | |
|---------------------------|---------------------------|
| 43A. SIGNATURE OF WITNESS | 44A. SIGNATURE OF WITNESS |
| 43B. ADDRESS OF WITNESS | 44B. ADDRESS OF WITNESS |

FENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or for the fraudulent acceptance of any payment to which you are not entitled.

ADDENDUM

6



| | | | | | | | | | | | |
|---|--|---|--|--|--|---|------------------------|------------------------------|--|---|--|
| COPY TO <input type="checkbox"/> INS <input checked="" type="checkbox"/> MED | | | <input type="checkbox"/> DEB FOLDER <input type="checkbox"/> R & E FOLDER | | <input type="checkbox"/> OTHER (Specify) | | RATING DECISION | | 2. FILE NUMBER CSS 457-84-5098 29-708311 | | |
| A. DATE OF CLAIM 1-31-85 | | B. DATE OF LAST EXAMINATION HS 1-29-85 to 3-20-85 | | 6. DATE OF DEATH | | 7. INITIALS AND SURNAME OF VETERAN A. E. RANCHER | | | | | |
| 8. SEX <input type="checkbox"/> MALE <input checked="" type="checkbox"/> FEMALE | | 9. BRANCH A. ARMY B. NAVY C. USMC D. USCG E. USPHS F. USAF H. WAC I. AIR CORPS (For others See M21-4, App. C) A | | 10. ACTIVE DUTY (Mo., day, yr.) EOD RAD 4-27-81 2-1-84 | | 11. ADOTL. SVC 1. WT. 2. PFE 3. MCD | | 12. DATE OF BIRTH 8-14-57 | | 13. COMBAT 1. NONE 2. COMP 3. NON COMP 4. BOTH 1 | |
| 14. EMPLOYABILITY (For compensation only) EMPLOYABLE OR NOT AN ISSUE 2. UNEMPLOYABLE 1 | | 15. COMPETENCY 1. COMPETENT OR NOT AN ISSUE 2. INCOMPETENT 1 | | 16. NO. OF S/C DISAB. (0 through 9) (9 to show 9 or more) 1 | | 17. FUTURE DATE CONTROLS PHYSICAL EXAM. NO. YR. REASON 02 86 01 OTHER CONTROL ACT. NO. YR. REA. 1. ESTAB. 2. CANCEL. | | | 18. DATE OF THIS RATING 7-24-85 | | |

19. NARRATIVE

Allison E. Rancher
620 Springfield Avenue
Eutaw, AL 35462

J. ORIGINAL CLAIM

I. SERVICE CONNECTION FOR NERVOUS CONDITION

F. Service medical records note examination of July 1980 was normal. The records do show the veteran underwent mental health evaluation however, findings are not shown. Such occurred during active duty. Complaints of nervousness were noted in July 1982. Subsequent discharge examination of 1-27-84 was normal. On the claim the veteran states she suffered nervous problems in 1983. The sited hospital summary shows hospitalization for paranoid schizophrenia. The veteran was treated with medication and subsequently stabilized her mental condition. By 2-12-85 thought disorder was controlled with medication. At discharge her condition was stabilized on medication and she was shown to be competent but told to avoid stressful employment.

D. A careful review has been made of all evidence of record. There is no evidence to establish chronic nervous disability existed during active service and in particularly prior to active military duty. In view of all findings, service connection for paranoid schizophrenia is warranted under the presumptive provisions of the law. Such is assigned effective 1-29-85, date of hospitalization during which such was diagnosed. A temporary total evaluation is assigned under the provisions of Paragraph 29. Effective 4-1-85, a 30% (percent) evaluation is assigned for nervous disability with a future examination scheduled for 1986 to determine residual disability at that point.



Veterans Administration

RATING DECISION CONTINUATION SHEET

NAME OF VETERAN

A. E. RANCHER

FILE NUMBER

SS 417 84 5098

PAGE 2

OF RATING DATED:

7-24-85

29-70831

9203

1. SC (PTE PRES) .

PARANOID SCHIZOPHRENIA, COMPETENT
100% from 1-29-85 (PARAGRAPH 29)
30% from 4-1-85

20. SPECIAL PROVISION CODE

21. SPECIAL MONTHLY COMPENSATION

| | | | | | | | | | |
|---|------------------------------|--|--|----------------------|--|---------------|---------------|--------------|--|
| 1 - PAR. 28 2 - PAR. 30 | 3 - VAR 1321 4 - VAR 1322 | 5 - ANAL. RATING 6 - OTHER OR COMB. | 7 - PAR. 28 | A. BMC PAR CODE | B. LOSS OF USE | C. ANAT. LOSS | D. OTHER LOSS | E. HOSP. BMC | |
| 22. NO. OVER SIX | 23. CLAIMANT REPRESENTED BY: | | | 24. RATING BOARD NO. | | | 25. R.O. NO. | | |
| <input type="checkbox"/> AL <input type="checkbox"/> VFW <input type="checkbox"/> DAV <input type="checkbox"/> ARC <input type="checkbox"/> AMVETS <input type="checkbox"/> OTHER (Specify) | | | | 4 | | | 322 | | |
| 26. RATING ASSISTANT (Legal-Occupational) | | | 27. RATING SPECIALIST (Legal-Occupational) | | 28. RATING SPECIALIST (Legal-Occupational) | | | | |
| E. B. REYNOLDS, M.D. CHM. <input type="checkbox"/> | | | C. D. MAY CHM. <input type="checkbox"/> | | J. W. MITCHELL (029) CHM. <input type="checkbox"/> | | | | |

VA FORM OCT 1980 21-6796b

SUPERSEDES VA FORM 21-6796b, AUG 1977, WHICH WILL NOT BE USED.

U.S. GOVERNMENT PRINTING OFFICE 1980-621-ND 11974

MITCHELL:ja

RB4

d:2:52:7;19;85

t:7/24/85

Administration

474 SOUTH COURT ST.
MONTGOMERY AL 3610

(RO COPY)

AUGUST 1, 1985

IN REPLY REFER TO: 21/24

FILE NUMBER:

ALLISON E RANCHER
620 SPRINGFIELD AVE
EUTAW AL 35462

29-708311
~~47-84-5098/00~~
A E RANCH

YOUR CLAIM FOR DISABILITY COMPENSATION HAS BEEN APPROVED AS FOLLOWS:

| MONTHLY RATE | EFFECTIVE DATE |
|--------------|----------------|
| \$1295.00 | 2-01-85 |
| \$185.00 | 4-01-85 |

SERVICE CONNECTION HAS BEEN ESTABLISHED FOR:
PSYCHOSIS

30%

A TEMPORARY 100% DISABILITY RATING HAS BEEN ASSIGNED FROM THE FIRST OF THE MONTH FOLLOWING THE DATE OF YOUR HOSPITAL ADMISSION FOR TREATMENT OF SERVICE-CONNECTED DISABILITY. THIS RATING WILL CONTINUE UNTIL THE END OF THE MONTH OF HOSPITAL DISCHARGE, COMMENCEMENT OF LEAVE OF MORE THAN 30 DAYS, OR TERMINATION OF TREATMENT OF SERVICE-CONNECTED DISABILITY. WHEN WE RECEIVE A FINAL HOSPITAL SUMMARY, WE WILL REVIEW YOUR ACTUAL DISABILITY STATUS AND NOTIFY YOU OF ANY CHANGE.

DUE TO DISCHARGE FROM CARE AT VA EXPENSE THE FULL RATE OF COMPENSATION TO WHICH YOU ARE ENTITLED HAS BEEN RESTORED AS OF THE DATE OF DISCHARGE FROM THE HEALTH CARE FACILITY.

ENCL: IB 04-81-6 21-8764

VETERANS ADMINISTRATION

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

322

ADDENDUM

7

After a period of hospitalization of about 44 days, she was felt to have stabilized to the point where she could be released to her parental home, and to continue psychiatric followup on an outpatient basis.

Ms. Rancher was a member of the Army ROTC while attending college, and she was commissioned as a second lieutenant as she entered active duty in 1980. She had a variety of assignments within duty stations in the U. S., and she did well, having been promoted to 1st lieutenant. In her last duty station, she had trouble with a warrant officer who was her subordinate, and who showed disrespect to her and allegedly told her he would not do any of the things she ordered him to do. When she complained to her superiors, she could tell the matter was not given any importance and she instead was given a direct order to report to the mental hygiene clinic for an evaluation. As a result of the evaluation, she was hospitalized and given psychotropic medication which, she says, knocked her for a loop. In such condition she was discharged from the Army with an honorable discharge in 1984.

While she was hospitalized in Tuscaloosa VA, she was notified that her job in Anniston Depot was terminated. She has not succeeded in finding employment since. She tried to take some courses in the University of Alabama, but she had to withdraw when she became symptomatic after running out of medication, soon after Dr. Nagi resigned.

Ms. Rancher appears to be of about average intelligence, with some obvious cultural beliefs in the supernatural, mixed with strong religious inclination. She reminds one of a person brought up in the Victorian Era, when natural impulses were handled primarily by defenses such as repression and resort to fantasy. Her psychotic break was characterized by paranoid ideation, with delusions of persecution and experience of auditory hallucinations.

My impression is that of a 28 year old, unmarried, Black female who experienced considerable stress while in the military, trying to assert herself in her role of a commissioned officer, female and Black, in a situation of primarily white, male commissioned officers who successfully challenged her authority and brought upon an Adjustment Disorder with mixed disturbance of emotions and conduct; who, within a year's time from discharge from active duty became floridly psychotic, while trying to make an adjustment away from home, facing the onslaught of social, sexual and financial needs.

DIAGNOSIS: Schizophrenia, paranoid type, in a state of partial remission under psychiatric supervision and on psychotropic medication.

DEGREE OF INCAPACITY: Moderately severe, unable to pursue career in regular Army and in civilian job in Army Depot.

SOCIAL IMPAIRMENT: Moderate. Great conflict between need for social interaction and fear of unacceptable conduct.

DEGREE OF COMPETENCY: Competent for VA purposes.

PROGNOSIS: Guarded.


G. G. OCHOA, M.D. CHARLES T. NEVELS, M.D.
Staff Psychiatry Chief Psychiatry

ADDENDUM

8

DEFERRED OR CONFIRMED RATING DECISION

1. TYPE OF CLAIM
 DISABILITY
 DEATH
 ACCRUED

2. FILE NUMBER
 29 708 311
 3. INITIALS AND SURNAME OF VETERAN
 A. E. RANCHER

4. DATE OF DEATH

5. DATE OF LAST EXAMINATION
 2-24-86

6. DATE OF THIS RATING
 4-10-86

PART I - DEFERRED RATING DECISION (Rating deferred pending receipt of data indicated below.)

7. REASON(S) FOR DEFERRAL (Check appropriate boxes)
 EXAMINATION REPORT HOSPITAL REPORT FIELD EXAMINATION REPORT SUPPLEMENTAL SERVICE RECORDS EVIDENCE FROM VETERAN OR OTHERS OTHER (Specify)

8. EXPLANATION FOR ITEMS CHECKED

PART II - CONFIRMED RATING DECISION

9. CLAIM REVIEWED ON THE FOLLOWING EVIDENCE:

I. Routine future exam
 II. Eval SE schizophrenia
 FID. The veteran had a pleasant smile when she introduced herself, and she was fairly at ease in the interview, although several times the matters being discussed were obviously upsetting to her. She has been unable to find a job, and had to withdraw from school when she ran out of meds. She has great conflict between need for social interaction and fear of unacceptable conduct. She remains on meds under psychiatric supervision.

10. EVIDENCE WAS RECEIVED SUBSEQUENT TO RATING ACTION DATED:

7-24-85

This evidence does not warrant change in service-connected status or evaluation of any disability or contains any new and material evidence relevant to the question at issue which was not on file when the previous decision was made. Such decision is therefore CONFIRMED.

11. DECISION ON EXAMINATION REPORT

VA FORM 21-2807 ATTACHED FUTURE EXAMINATION AS SCHEDULED NO EXAMINATION

12. FUTURE DATE CONTROLS

REFER TO INPUT ACTIVITY

| ACTION | MONTH | YEAR | REASON |
|--------|-------|------|--------|
| 1 | 04 | 88 | 01 |
| | | | |
| | | | |

REASON CODES
 01 - FUTURE PHYS.
 02 - INDIVID. UNEMP. REVIEW
 03 - HELPLESS CHILD REVIEW
 04 - NSC TB VAR 1342 REVIEW

13. CLAIMANT REPRESENTED BY:

AL VFW DAV ARC AMVETS OTHER (Specify)

16. RATING SPECIALIST (Medical)

[Signature]

CHM.

17. RATING SPECIALIST (Legal-Occupational)

[Signature]

CHM.

14. RATING BOARD NO.

15. STATION NO.

1 322

18. RATING SPECIALIST (Legal-Occupational)

[Signature]

285114 / 4/10/86

ADDENDUM

9

474 SOUTH COURT ST.
MONTGOMERY AL 36107

(20 COPIES)

APRIL 130 1988

IN REPLY REFER TO: 21/24

ALLISON E BARNES
620 SPRINGFIELD AVE
MONTGOMERY AL 36102

FILE NUMBER:
21-200-100/00
E E BARNES

WE HAVE CAREFULLY REVIEWED YOUR CLAIM FOR DISABILITY COMPENSATION
BASED UPON ALL THE EVIDENCE OF RECORD INCLUDING:

AN EXAMINATION DATED 2-24-88

THE EVIDENCE DOES NOT WARRANT ANY CHANGE IN OUR PREVIOUS DETERMINATION AS TO THE FOLLOWING CONDITIONS:

NERVOUS CONDITION - 30%

VETERANS ADMINISTRATION

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

322

VA FORM 20-8332a-1
SEP 1984

1318

ADDENDUM

10

322

Regional Office
474 South Court Street
Montgomery, Alabama 36104



**Veterans
Administration**

May 9, 1986

Allison E. Runcher
620 Springfield Ave.,
Birmingham, AL 35462

In Reply Refer To: 322/28

C-29 708 311

We are sorry it has become necessary to discontinue your course of vocational rehabilitation for the objective Rehabilitation Counseling effective 5-9-86 for the following reasons:

Vocational Rehabilitation is a process that includes treatment, accessibility to services and a variety of services. *this was omitted in copy to school*
I feel that without at least two years of inpatient and outpatient treatment that places your disability in a state of remission and maintenance of this remission for at least six months this program will not be of benefit to you. Based on the nature of your disability, your expectations of both this program and State Rehabilitation are too high. When you and your doctor feel you are ready to attempt rehabilitation please provide documentation of treatment. If you believe our decision is incorrect, please see the Notice of Procedural and Appellate Rights printed on the back of this letter.

When you have done this contact me and I will be happy to work with you. If you need further assistance, please contact me at the address below or telephone me at 731-1736.

Sincerely yours,

Sylvester J. Coleman, VRS
Vocational Rehabilitation Specialist

NOTICE TO SCHOOL OR ESTABLISHMENT: The named veteran's vocational rehabilitation has been discontinued. He/she may not reenter vocational rehabilitation under Chapter 31, Title 38, U.S.C. unless you receive VA Form 22-1905 authorizing reentrance.

NAME AND ADDRESS OF SCHOOL OR ESTABLISHMENT

Box 2480
University of Alabama
P. O. Box 9347
Birmingham AL 35486

ADDENDUM

11

8. EVALUATION PROCEDURE

322

9J. EVALUATION SCHEDULE

9K. PROGRESS NOTES

9A. OBJECTIVE THREE (Description)

10B. ANTICIPATED COMPLETION DATE

9C. SERVICES PROVIDED

10D. DURATION OF SERVICES

FROM (Mo., Yr.) TO (Mo., Yr.)

9E. NAME & ADDRESS OF PERSON OR INSTITUTION PROVIDING SERVICES

10F. PERSON TO CONTACT (If Institution)

10G. TELEPHONE NO. (Include Area Code)

10H. EVALUATION CRITERIA

10I. EVALUATION PROCEDURE

10J. EVALUATION SCHEDULE

10K. PROGRESS NOTES

11. CLOSURE STATEMENT

9/17/86 vet is much too psychotic for this program a state rehab to benefit him should be declared infeasible if he reapply: sfg

I CERTIFY THAT I have participated in the development of this program plan. I understand it is my responsibility to cooperate in the program and make reasonable efforts on my behalf. There will be periodic and/or an annual review of the plan, at which time I will have a chance to jointly redevelop it. (Check box if VA Form 28-8872a, Rehabilitation Plan - Continuation Sheet is used.)

12. SIGNATURE OF COUNSELING PSYCHOLOGIST

James Daily

13. SIGNATURE OF VETERAN

Allison E. Rancher

14. SIGNATURE OF VOCATIONAL REHABILITATION SPECIALIST

Robert G. Coleman

15. ANNUAL REVIEW DATE

37

END PRODUCT

| NO. | DATE | INITIALS |
|-----|------|----------|
| | | |

ADDENDUM

12

NAME OF VETERAN (Last, first, middle initial)

FILE NO

Sanchez Allison E.

29-708-311

TRAINING FACILITY

CONTACT BY

DIRECT SUPERVISION
 OTHER (Specify below)

VARO, VR&C Division
Montgomery, AL

REPORT

MORE THAN ONE REPORT FOR THE SAME VETERAN MAY BE MADE ON THIS SHEET WHEN APPROPRIATE. EACH CONTACT REPORTED SHOULD BE DATED AND ANY FURTHER ACTION TO BE TAKEN NOTED.

EMPLOYMENT ASSISTANCE RECORD

1. PROGRAM GOAL: _____
PROGRAM LENGTH (MONTHS) _____ ESTIMATED COSTS _____

2. REFERRALS: (AGENCY - DATE) _____
FORMS PREPARED _____
FL 22-77 _____
TJTC _____
SF-171 _____
RESUME _____

3. CUMULATIVE PROGRAM CHARGES

ITEM AMOUNT

4. ONE MONTH FOLLOW-UP (EP 748) DATE _____

COMMENTS:

EMPLOYED: YES _____ NO DATE OF EMPLOYMENT _____
NAME, ADDRESS, PH. NO. OF EMPLOYER: _____

JOB TITLE: _____

5. THREE MONTH FOLLOW-UP (EP 748) DATE *7/17/86*

COMMENTS: *this veteran is too psychotic to be able to train or maintain employment. If he re applies he should be referred to the VA panel.*

6. REHABILITATED: DATE _____ *YES*

ADDENDUM

13

APR 22 1988

620-Springfield Avenue
Eutaw, AL 35462

April 18, 1988

Honorable Claude Harris,
The House Veterans Affairs Committee
P. O. Box 2627
Tuscaloosa, AL 35403

Dear Sir,

I am requesting for your assistance as a Representative in a Personal Hearing for Allison F. Rancher in reference to her disability rating claim as a Disabled Veteran of the United States of America.

However, there seemed to be some inconsistencies in her diagnostics as to her disability that provides medical information, medical evaluation (s), medical treatment (s) and medical terminologies in supporting facts to determined her disability ratings as a higher percentage due to the nature of her illness.

Your assistance will be greatly appreciative. Thank you.

Sincerely yours,

Allison F. Rancher

Allison F. Rancher
417-84-5098 DW

29 708 34

322

1309

ADDENDUM

14

April 19, 1988

To Whom It May Concern:

1. I (Allison E. Rancker), 417-84-5098, would like to submit the following information on my behalf as new evidence in supporting the decision to have the Service-Connected Disability Claim Rating re-evaluated and increased to a higher percentage of at least 80% and higher with Military Retirement Benefits, because of the severe ~~and~~ emotional distresses and wounds that were caused due to and under conditions similar to war, which left me with a long-term illness as a result of my military service. I am requesting that this letter be presented and treated as an exhibit in the Personal Hearing of my claim.

2. I have recently encountered several extremely disturbances, hindrances, injuries, and disadvantages situations which have now become a great obstacle in my life because of the severe wound nature, and causes of my disability, which is detrimental to me in living a useful and normal life-style. The following obstacles are listed below:

d) Because of the nature, wounds, and causes of my Service-Connected Disability, I have received several unfavorable opinions and/or recommendations that imposed hindrances and hardship (a) restrictions in seeking employment and schooling in the job(s) related work (history) areas, where I have skills, experiences, training, and education. And the State and VA Rehabilitation programs feel that my career goals are much too high because of the nature of my illness. Attached Enclosure - 1.

b) Also, because of the severe nature, wounds, and causes of my Service-Connected Disability I suffer despair because I have been counselled not to seek for employment in the job(s) areas where I have work-related skills, experiences, training, and education because he does ^{not} think I can work effectively with people or words to that effect. Attached Enclosure - 2 (VA Rehab File in reference to Counselor in Atlanta, Georgia).

c) I was counselled on the telephone by my doctor that she had talked to the VA Counselor and agree with his decision. And she stated because of the psychiatrist history and/or background that I would have problems work-

ing with people ~~only~~ words to that effect. The VA Counselor recommended that I should not work in the Management Sociology, and Social Services field period, where my (work history), experiences and education goals are. Attached Enclosure 2 (VA Report File, in reference to VA Counselor in Atlanta, Georgia). Enclosure 3, Attached.

d) Because of the severe natures, wounds, and causes of my psychiatrist treatment(s) (history) of my Service-Connected Disability, I have encountered several problems and hindrances in getting insurances which put me into a position and/or condition of handicap(s). Even though I am rated only thirty percent, but I have a major and severe disabling disability, along with other handicaps.

3. However, because of my Service-Connected Disability there are severe natures wounds, and causes that have and/or caused limitations, disadvantages, and handicap(s), which ^{are being} imposed upon me and keeping me from living a useful and normal life-style. And, because of the duration ^{and} causes of my emotional distresses, the medical treatment along with rehabilitation will not restore me back to the former ^{position}.

in the Military, former job with the Civil Service, to the former state of excellent Mental Health, and to ^{stitution} the ~~restoration~~ ^{restitution} of (anything taken away lost, or wounded). Therefore, I will always suffer a severe ^{per} case of despair.

4. Therefore, I am requesting that this information and/or new evidence be used in "Good Faith" in supporting the decision to have my Service Connected Disability Claim Rating re-evaluated and increased to a higher percentage (a) of 80% and above, along with Military Retirement Benefits, which would show the justification (a) of the severe ~~per~~ ^{per} wounds, nature, and cause of my disability that was aggravated ~~by~~ and under conditions (a) similar to war, which left me with long-term (a) illness and wounds, injuries as a result of my military service.

5. Your cooperation and assistance will be greatly appreciated.

Sincerely Yours,

Allison E. Rancho
417-84-5098
DAV

- 2014 -

- Statement -

il (Allison E. Rancker) would like to submit this statement and new evidence (a) on my behalf in supporting the decision to have my Disability Claim Rating increased to a higher percentage (a) of 80% and above because of the severe wounds, causes, and natures of my Service-Connected Disability.

While I was under Dr. Nagi medical treatment supervision, and later was transferred as Dr. Heber out-patient, I have encountered several obsessive, acute psychosis and/or schizophrenic episodes associated with traumatic memories that produces fear, confusion, depression, dreamlike, emotions, turmoil and distrust most of all, which could have caused me to become an in-patient during January 1986, while attending Grod School. However, because of the way I was treated as an in-patient, has caused me to suffer much fear, distrust, and suspicion, even to this day. So, even now when I have traumatic memories associated with obsessive episodes and/or acute psychosis and/or acute schizophrenic episodes, my family now know how I feel about becoming an in-patient in the VA hospital. Therefore, when I talked out my traumatic memories and emotional (feelings) and later on, go to the VA hospital for additional

medical treatment as an out-patient
to let them know I have had an
acute obsessive, acute psychosis
and/or acute schizophrenic episodes
And, all the doctor and nursing
staff, etc, is caused more ~~harm~~
suffering, ^{fear} suspicious and distrust
by the interrogational ~~method~~ (a.)
they used, and asked. My sister
and/or friends have I feel acting
strange in my presence. The doctor
told me to come back in a couple
of days if things didn't get better
but I didn't because his methods
of treatment caused more harm than
good. So, I begin to ask my
pastor, friends, cousins and church
members for their prayers because
the evil forces were trying to
destroy my mind and/or sanity.

During August 1986, I experi-
enced an obsessive episode, as-
sociated with traumatic memories
that produced fear for myself and
my family and my love ones. I
became very emotional and fear-
ful, that could have lead me to
becoming an in-patient in the
VA hospital, but once again, because
my mother and/or family knew how
I felt ^{about} being confined to the VA
Hospital and had ^{my} gotten a better
understanding of my mental
injuries, wounds, and illness

before, they weren't too much alarmed, so they began to give me medication and listening to me talked out my traumatic memories and/or emotional feelings. And I continual to asked for prayers (A) to help me keep my sanity and to keep the evil forces from attacking me mentally.

And, during November 1987, I encountered obsessive episodes associated with traumatic memories after being questioned about the causes and injuries of my mental health. During my appointment I told my doctor about the fearful affects and she increased my medication dosage (B). Because of the wounds, natures and causes of my disability I have to sleep with a light on at all times. And I continual to asked family friends and relatives to pray for me because the evil forces are still trying to destroy my mental state (sanity).

During January 1988, I encountered another obsessive, acute psychosis and/or acute schizophrenic episodes associated with traumatic memories after having a negative conversation with an associate that caused the evil forces to be imposed upon me after discussion. The

causes and circumstances, that lead to my disability, I immediately called my pastor long distant, in the mid of the night and I informed him about the will forced (feelings) and I asked him to pray for me.

During February 1988, after an appointment with a VA Counselor (Psychologist) and hearing his negative opinions about my mental capabilities, I became irritated and I felt hopeless about living a useful and normal life-style. Since, he wasn't able to help me in selecting the career objectives and/or goals I had presented, therefore, I asked him to close my case and returned my VA Rehab file and/or records to Alabama, because I was going back home for help. This is when I realized the seriousness and severeness of my disability from his counselling session.

However, when I returned home and I informed my doctor about the new evidence (a) and/or information that I had received from the VA Counselor, in reference to the ^{causes} ~~causes~~ ^{one} nature (a) of my Service-Connected Disability.

I also informed her that because of the wounds, causes and/or nature (a) and history of my Service-

connected disability, they have now
come
graved obstacles and hindrances
in seeking employment, training,
and schooling in the job (a) re-
lated areas. Where my experiences,
skills, education and schooling
and work history. And, at this
time I questioned the percentage
rating of my Service-Connected
Disability, because the thirty percent
age had misled me to believe that
the disability was not severe and
a major disabling mental health
and fitness disorder. I informed
her that a higher percentage rating
would show justification of my
disability which was aggravated
by and under conditions similar
to war, which have left me
with long-term (a) illness, wounds,
and injuries as a result of my
military service, and/or wounds
to this effect. Which would put
my disability into more of an advant-
age than a disadvantage in seek-
ing help from government agencies
and other agencies recognized by
the VA as representatives of the
Disabled American Veterans
(DAV). And after this conversation
and/or counselling my doctor
reduced my medication dosage.

However, as I previously stated
that I still encountered obsessive,

acute psychosis and/or acute schizophrenic episodes associated with traumatic memories, sleep disturbances that would have caused me to become a VA Hospital in-patient, but because of the way I was treated as an inpatient, have lead me to seek additional help, treatment (s) and ways to cope with my disability ^{and} to keep me from having to become an inpatient and to remain as an out-patient. Even thou I am medical treated by the VA Hospital (doctor (s)) I still suffer inevitable distress, despair, hardship (s) and oppression because of the causes, wounds, and nature (s) of my service-connected disability.

~~END of STATEMENT~~

(NOTHING FOLLOWS)

ADDENDUM

15

7-28-88

FOR HAT...
FOR FILING PURPOSES
[Signature]
[Stamp]

COMPENSATION AND PENSION EVALUATION
NEUROPSYCHIATRIC
July 19, 1988

The patient is a 30 year old negro female reporting for a routine future Compensation and Pension examination. The examination was requested by the government. Presently the patient is listed as being service connected for paranoid schizophrenia, but she is also claiming a service connection for trouble with both knees. Her disability has been rated as 30% by the VA. At this time the patient is unemployed and says she has been unable to work since 1984.

The patient is single and has never been married. She is living with her mother and her brother, and said her overall immediate family situation is satisfactory.

The patient has not been involved with law enforcement agencies due to illegal acts. According to the veteran her financial situation is somewhat inadequate to meet her needs and she has some debts which she has a hard time paying. She assumed these debts when she was in the service making a regular salary.

PHYSICAL HEALTH: The patient mentions that she has pain in both of her knees which bothers her a great deal.

MENTAL HEALTH: The patient's last hospitalization for psychiatric purposes was in 1985 at the TVAMC, and she is receiving out-patient clinic treatment at the TVAMC. Her treatment modalities are drugs and routine follow-up treatment.

The VA currently list the patient as competent.

The patient describes her psychiatric condition as fair to poor, and that since her last examination her condition has not changed. She describes her current symptoms from her psychiatric condition as having a tendency to fear a lot. She feels like something is going to happen to her, or that someone will hurt her. She is especially afraid to be alone at night and said she has to take medicine in order to get to sleep. The patient fidgets during the interview and mentions she has difficulty for long periods of time. She has no thoughts of suicide. There is no evidence of grandiosity.

The patient is preoccupied with some physical complaints for which there may be an organic basis.

The patient abides by the usual laws and social customs. The patient's speech is well organized and goal directed. At times of stress, however, the patient hears voices and sounds with no apparent source outside herself. And she is uncomfortable around some people and actively avoids some people.

The patient is cooperative and answers questions readily and completely. She is a college graduate and received a commission as a Second Lieutenant of Ordinance upon graduating from college.

RANCHER, ALLISON E.
S.S.#: 417-84-5098
VA MEDICAL CENTER
BIRMINGHAM, AL



ADDENDUM

16

VETERANS ADMINISTRATION

RATING DECISION

1. REGIONAL OFFICE NO. 322

2. TYPE OF RATING DISABILITY

3. ORIGINAL DISABILITY RATING? NO

4. VETERAN'S FILE NO. C 29 708 311

5. VETERAN'S INITIALS AND SURNAME A. E. RANCHER

6. COPY TO INS, MED & DAV

7. VETERAN'S SOCIAL SECURITY NO. 17 84 5098

8. DATE OF CLAIM 2/8/88

9. DATE OF THIS RATING 9/7/88

10. DATE OF BIRTH 8/14/57

11. DATE OF DEATH

12. ACTIVE DUTY (Mo. & D by Yr.) EOD 4/27/81 RAD 2/1/84 EOD RAD

13. ADDL. SERVICE CODE

14. COMBAT STATUS 1

15. DATE OF LAST EXAMINATION 7/19/88

16. DATE OF FUTURE PHYSICAL EXAMINATION (Mo./yr.) NO EXAM

17. EMPLOYABLE (COMPensation only) YES

18. COMPETENT

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

C ESTABLISHED FOR DC 5299-5257 and 5299-5257

Allison E. Rancher
620 Springfield Ave.
Eutaw, AL 35462

Claim for increase

I. Evaluation of nervous condition. SC for knees.

ROTC exam of 4/18/79, was essentially negative. Treatment records on 7/3/79, showed the veteran fell while running. She twisted the left knee and right knee was bruised. This injury was apparently during advanced ROTC training. She was seen on 3/17/81, with a strained left knee. She had

VETERANS ADMINISTRATION

RATING DECISION
CONTINUATION SHEET

NAME OF VETERAN
A. E. RANCHER

FILE NUMBER
C 29 708 311

Page 2 of Rating Dated: 9/7/88

complained of left knee pain for 1 week. On 2/5/82, she complained of right knee pain and the diagnosis was right knee strain. On 2/8/82, she had bilateral knee pain while running. She was given a profile for the knees. On 3/17/82, she was referred for x-ray of the knees. Separation examination of 1/27/84, gave a history of painful knees and an injury at Ft. Lewis, WA during advanced camp. The separation examination showed a profile was in effect for knee pain. On current examination the veteran is diagnosed as having chondromalacia of the patella bilaterally. A diagnosis of genu varum was also shown. Examination of the knees showed there was tenderness to direct compression over the knee cap. Range of motion of the left knee was 0-95 degrees. Range of motion of the right knee was 0-95 degrees. The right knee had trace medial laxity and trace lateral laxity. The left knee was tender over the anterior surface medially. X-ray of the knees showed no significant abnormality. On special psychiatric examination the veteran's speech was well organized and goal directed. She was oriented but there was a history of confusion during periods of stress. She indicated at times she feels she is being poisoned and there is a plot against her. There has been a loss of interest and enjoyment and she has difficulty concentrating. She was alert and responsive. The overall severity of her psychiatric illness was moderate to severe. She was considered competent for VA purposes.

Current examination findings do not show an increase in the severity of the veteran's schizophrenia. Although evidence indicates the veteran may have initially injured her knees during advanced ROTC training, verification of her status during that period has not been established under 38 CFR 3.6. However, sufficient evidence is of record to show the veteran's knee condition was aggravated during her period of verified active duty and SC is established on the basis of aggravation without further development. Genu varum is considered C&D.

1. SC

PARANOID SCHIZOPHRENIA, COMPETENT
30% from 4/1/85 (PTE PRES)

VETERANS ADMINISTRATION

RATING DECISION
CONTINUATION SHEET

NAME OF VETERAN
A. E. RANCHER

FILE NUMBER
C 29 708 311

Page 3 of Rating Dated: 9/7/88

299-5257

CHONDROMALACIA, PATELLA, RIGHT
10% from 2/8/88 (PTE AGG)

299-5257

CHONDROMALACIA, PATELLA, LEFT
10% from 2/8/88 (PTE AGG)

8. NSC (PTE)

GENU VARUM (C&D)

43. Bilateral factor of 1.9% added for
diagnostic codes 5299-5257, left and right.

OMB SC

30% from 4/1/85
50% from 2/8/88

24. MEDICAL RATING
SPECIALIST

25. RATING SPECIALIST

26. RATING SPECIALIST

27. P/A

S. Boezer
S. BOEZER, MD

J. W. Laney
J. W. LANEY (031)

A. W. Jordan
A. W. JORDAN

28
28. R.B.NO.

CHP.//

CHP/X/

CHP.//

1

ADDENDUM

17

RATING DECISION

| | | | |
|--|-----------------------------------|---|------------------------------------|
| 1. REGIONAL OFFICE 322 | 2. TYPE OF RATING DISABILITY | 3. ORIGINAL DISABILITY RATING NO | 4. VETERAN'S FILE NO. C29708311 |
| 5. VETERAN'S INITIALS AND SURNAME A. E. RANCHER | 6. COPY TO DAV | 7. VETERAN'S SOCIAL SECURITY NO. 417845098 | |
| 8. DATE OF CLAIM 10-27-88 | 9. DATE OF THIS RATING 11-3-88 | 10. DATE OF BIRTH 8-14-57 | 11. DATE OF DEATH |

| | | | |
|---------------------------------|-----|-----|-----------------------|
| 12. ACTIVE DUTY (Mo., day, yr.) | | | 13. ADDL SERVICE CODE |
| RAD | EOD | RAD | |

| | | | |
|----------------------|--|--|---|
| 14. COMBAT STATUS | 15. DATE OF LAST EXAMINATION 10-7-82 dated 10-24-88 | 16. DATE OF FUTURE PHYSICAL EXAMINATION (Mo./yr.) NO EXAM | 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 | B. BASIC SMC | C. HOSPITAL SMC | D. LOSS OF USE | E. ANAT LOSS | F. OTHER LOSS |
| CURRENT | | | | | |
| FUTURE | | | | | |

23. NARRATIVE

J. VA Form 10-732

I. Entitlement under Paragraph 29, Rating Schedule

F. VA Form 10-732 certifies that the veteran has been hospitalized for treatment and/or observation of his service-connected disability of PARANOID SCHIZOPHRENIA, Capitated since 9-29-88 and remains hospitalized for this condition. Therefore, entitlement to a total rating under Paragraph 29 is established

| | |
|---|--|
| 1. SC (PTE INC.) 9203 100% from 9-29-88 (Par 29) 5299-5257 1070 5299-5257 1070 | 8. NSC 5299 COMB. 100% |
|---|--|

| | | | |
|---|---|---|--------------------------|
| 24. MEDICAL RATING SPECIALIST <i>[Signature]</i> | 25. RATING SPECIALIST <i>[Signature]</i> | 26. RATING SPECIALIST E. H. Seel 010 | 322 28. R.B. NO. 1 |
|---|---|---|--------------------------|



ADDENDUM

18



| | | | | | | |
|----|------------------|------|------------------|--------------------|---|---------------------------------------|
| TO | VARO, Montgomery | FROM | VAMC, Tuscaloosa | REPORT (Check one) | <input checked="" type="checkbox"/> INITIAL | <input type="checkbox"/> SUPPLEMENTAL |
|----|------------------|------|------------------|--------------------|---|---------------------------------------|

PART I - PERSONAL DATA

| | | |
|---------------------|--------------|------------------------|
| 1. VETERAN'S NAME | 2. CLAIM NO. | 3. SOCIAL SECURITY NO. |
| RANCHER, Allison E. | 29-708-311 | 417-84-5098 |

| | | | |
|--|--------------------------|-----------------------------|---------------------------------|
| 4. HOSPITAL DOMICILIARY OR NURSING HOME CARE (Check one) | | | |
| A. HOSPITAL | B. DOMICILIARY | C. NURSING HOME | |
| <input checked="" type="checkbox"/> VA <input type="checkbox"/> NON-VA | <input type="checkbox"/> | <input type="checkbox"/> VA | <input type="checkbox"/> NON-VA |

PART II - MOVEMENT OR DISPOSITION (Check and indicate date of action)

| | | |
|---|---------|--------------|
| DATE OF ADMISSION | 9/29/88 | OTHER ACTION |
| DATE OF RELEASE OR OTHER ACTION | 11-2-88 | |
| <input type="checkbox"/> 1. TRANSFERRED TO: <input type="checkbox"/> 2. PLACED ON UNAUTHORIZED ABSENCE <input type="checkbox"/> 3. RETURNED FROM UNAUTHORIZED ABSENCE <input type="checkbox"/> 4. PLACED ON NON-BED CARE FROM UNAUTHORIZED ABSENCE <input type="checkbox"/> 5. RETURNED TO BED CARE FROM NON-BED CARE STATUS <input type="checkbox"/> 6. DATE SET FOR TERMINATION OF NON-BED CARE STATUS <input checked="" type="checkbox"/> 4. OUTPATIENT TREATMENT SC <input type="checkbox"/> 7. AUTHORIZED ABSENCE - 30 DAYS OR LONGER <input type="checkbox"/> 8. RETURNED FROM AUTHORIZED ABSENCE - 30 DAYS OR LONGER <input type="checkbox"/> 5. DIED | | |

PART III - CONDITION AT DISCHARGE

| | |
|---|---|
| 1. IS VETERAN CAPABLE OF RETURNING TO FULL EMPLOYMENT IMMEDIATELY? | 2. IS PERIOD OF CONVALESCENCE REQUIRED FOR VETERAN? |
| <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," how long?) |

PART IV - INFORMATION FOR VETERANS SERVICES DIVISION

| | |
|---|---|
| 1. DESTINATION OF PATIENT (Address) | 2. NAME AND ADDRESS OF PERSON AGREEING TO PROVIDE SUPERVISION |
| 620 Springfield Ave Eutaw, AL 35862 | |
| 3. IF COMMITTED, INDICATE COMMITMENT COURT AND LOCATION | 4. DATE COMMITTED |
| | |
| | 5. CURRENT BALANCE OF FUNDS ON DEPOSIT IN PFOP |
| | \$ |

PART V - ASSET INFORMATION

| | | | |
|---------------------|--------|-------------------------|------------------------------|
| 1. FUNDS ON DEPOSIT | AMOUNT | 2. LIST OF OTHER ASSETS | 3. ASSETS ON VA FORM 10-7131 |
| GRATUITOUS | \$ | | |
| OTHER | \$ | | |
| TOTAL | \$ | | |

PART VI - CERTIFICATION OF 21 DAYS CONSECUTIVE HOSPITALIZATION

Current medical records show the veteran was hospitalized for 21 consecutive days from _____ to _____ for treatment or observation of (State diagnosis(es))

and his presence is still required in the hospital for these conditions.

PART VII - REMARKS

REMARKS

| | |
|---|---------|
| SIGNATURE (Chief, Medical Administration) | DATE |
| THOMAS A. SAYLES, Chief, Medical Administration Service | 11-3-88 |

322



ADDENDUM

19

7132
10/26

14 11/29/88

CH# 29-708-311

PATIENT: RANCHER, ALLISON E.
SSN: 417-84-5098
AGE: 31
SEX: Female
RACE: Black
ADMISSION DATE: 9/29/88
DISCHARGE DATE: 11/2/88
TYPE OF RELEASE: OPT-SC
UNIT: 40A

DIAGNOSES TREATED:

1. Schizo-affective disorder.
2. Obesity.
3. Conjunctivitis, mild, left eye.
4. Dental: (a) Calculus; (b) Malocclusion.

DIAGNOSES NOTED BUT NOT TREATED:

1. Hepatitis B, acute or subacute phase.
2. Possible fibrocystic breast disease.

OPERATIONS/PROCEDURES:

1. Crown debridement 10/19/88.
2. Forcep extraction 10/19/88 and 10/27/88.

CHIEF COMPLAINT: The veteran was received as an authorized admission under a hold order pending commitment.

HISTORY OF THE PRESENT ILLNESS: This is one of several admissions to the hospital for this 31-year-old, Black, single, unemployed, 30% SC veteran, who has been out of the hospital over 3 years, and apparently had been doing quite well up until the last few months prior to admission when she began to become noncompliant with medication. She had gradually deteriorated and had become paranoid and delusional and threatening toward her family. She had become involved with a young man in the community, who, according to the mother, influenced the patient to get off of her medication.

PERTINENT PHYSICAL AND TEST FINDINGS: Mental status examination, the validity of the data collected from the patient was unknown (manic-psychotic state). Judgement/insight impaired. Memory adequate. The patient was oriented. Intelligence - borderline intellectual functioning. Audiovisual hallucinations reported by the patient - the voices being more well-defined than the vision; "talking to me - don't tell me to do hurt," etc. "Visions" concern more cultural/religious material. The patient was hypervocal/hyperactive, either hypomanic or manic state. Her affect was very labile - range of affect with anger at relatives and friends to laughing. She denied suicidal or homicidal ideations; denied threatening the family directly; admitted to telling her mother, "If you hit me you will go straight to hell." Patient denied that this

VAMC, TUSCALOOSA, AL.

PATIENT: RANCHER, ALLISON E.
SSN: 417-84-5098
DISCHARGE DATE: 11/2/88

was a threat from her to directly harm her mother. She had considerable religiosity. Grandiose/paranoid delusions, "They are deceitful and jealous - they want me committed - want control of my money - messing with me." She was talking about her military service - "Stressful situation; it strained my judgement - did negative things to me - my mind is like a computer," etc.

Physical examination, the physical examination was a less than 30 day examination with no significant changes noted since the last P.E. done 8/25/88. The patient had a Pap smear at that time which was negative. Patient was noted to have possible fibrocystic breast disease this admission, and a mamogram was ordered. All other findings were essentially negative.

LABORATORY DATA: Hepatitis profile 8/25/88 showed a positive HBSAG, positive anti-HBCAG, positive anti-HBEAG. Hepatic/renal profile 9/30/88 revealed an increased glucose of 146, decreased BUN of 5, decreased CO2 of 21, otherwise normal. Bone/joint profile 9/30/88 was normal. The hepatic profile of 10/7/88 revealed a decreased albumin of 3.3, otherwise normal. UA of 10/11/88 was normal. CBC 9/30/88 was normal. Pregnancy test of 10/5/88 was negative. Urine for drug and marijuana screening 9/29/88 was positive for barbituates. Serum cholesterol and triglyceride level of 9/30/88 was WNL. Lithium levels during patient's hospital stay ranged from 0.24 on 9/30/88 to 0.65 on 11/1/88. Thyroid profile 9/30/88 revealed an elevated T3RU of 47.8. TSH 9/30/88 was 0.8. RPR 9/30/88 was nonreactive. X-ray of the lumbar spine 10/3/88 was negative. X-ray of both knees 10/3/88 showed no evidence of recent bony injury, dislocation or arthritic change.

COURSE IN HOSPITAL: The patient was committed this admission due to her agitated, paranoid, and grandiose state prior to admission. She was placed on the closed section on acute psychiatry and prescribed Thorazine concentrate 100 mg. q.i.d, Lithium Citrate 300 mg. t.i.d, and Cogentin 0.5 mg. q.i.d, as well as a 1400 calorie diet. Patient exhibited a rather prompt response to being placed back on an effective chemotherapeutic regimen with remission of psychotic signs and symptoms. She became less hostile toward her family. Privileges were gradually increased with the patient being able to function without difficulty on an open ward by 10/11/88. In addition to her history of chronic psychosis with noncompliance, the patient had family conflicts and a history of boy friend problems. She was placed in individual therapy with Kathryn Dowdle, RN/CS during her hospitalization. The patient was found incidentally to have a positive hepatitis profile on an outpatient lab report that was received to be filed. Results of the lab tests done at the Birmingham VAMC were reviewed with Dr. Scott of the Birmingham VAMC nuclear medicine lab. He stated results of the lab test indicated that she represented an "acute exposure going through sero-conversion - potentially still infectious." Dr. Scott advised hepatitis precautions

VAMC, TUSCALOOSA, AL.

PATIENT: RANCHER, ALLISON E.
SSN: 417-84-5098
DISCHARGE DATE: 11/2/88

and another hepatitis profile was done with results as previously mentioned. Hepatic profile was noted to be WNL. On 10/21/88, the female nurse practitioner reported possible fibrocystic breast disease noted on initial physical examination. A mamogram was ordered, but patient could not be scheduled prior to discharge and will be completed on an outpatient basis. The patient continued to function well on an open ward. She was noted to interact appropriately with staff and other patients, and regularly attended her assignments. She appeared in good control, and was pleasant and cooperative. She was granted a weekend pass for adjustment purposes with a positive report from her family. While on pass, however, the patient reportedly got hair spray in her left eye. The left eye was noted to be stained with no abrasion observed. She was seen in optometry clinic and felt to have chemical conjunctivitis. It was treated with Gentamycin ophthalmic ointment to the left eye and a double eye patch with the conjunctivitis resolving. The patient's psychiatric condition appeared well stabilized on medication, and she had no evidence of psychotic signs and symptoms. The treatment team felt that she had gained maximum hospital benefit, and the veteran was therefore discharged with outpatient follow-up.

DISCHARGE PLANS AND AFTERCARE: The patient was discharged OPT-SC on 11/2/88. She will receive psychiatric follow-up from Dr. Sharon Geber at the Tuscaloosa VAMC. Her first appointment is 12/19/88, at 10:00 a.m. The patient is also to have a mamogram as scheduled previously during her hospital stay on an outpatient basis at the Birmingham VAMC. Patient signed a consent form and a copy of the outpatient hepatitis profile of 8/25-26 will be forwarded to the Green County Health Dept. in Eutaw, AL.

*negative
mamogram
EGB*

DISCHARGE MEDICATIONS: The veteran was dispensed a 30 day supply with one refill of medication as follows: Thorazine 100 mg. one q.i.d., Benadryl 25 mg. one q.i.d., Lithium Carbonate 300 mg. 1 t.i.d., and Tears Naturale - 15 cc's - 1 drop in either eye as needed q.i.d. for at least a week, with no refills.

DANGEROUSNESS STATEMENT: The veteran was not considered to be a danger to herself or others at the time of discharge.

COMPETENCY STATEMENT: The patient is competent for VA purposes.

EMPLOYABILITY STATEMENT: The patient probably is unable to compete for gainful employment - however, she may benefit from continued efforts at vocational rehabilitation.

SPECIAL INSTRUCTIONS: The patient, as previously mentioned, was noted to have hepatitis profile compatible with an acute exposure to hepatitis profile compatible with an acute exposure to hepatitis B virus going

VAMC, TUSCALOOSA, AL.
VAF 10-1000 DISCHARGE SUMMARY

PATIENT: RANCHER, ALLISON E.
SSN: 417-84-5098
DISCHARGE DATE: 11/2/88

through seroconversion, but potentially still infectious pending further studies; patient is to have follow-up at her local county health department.

Dictated by: *Debra Parham, R.N.*
DEBRA PARHAM, R.N.

Approved by: *E. G. Evans*
EUGENE G. EVANS, M.D.

DD: 11/17/88; DT: 11/17/88 rsc

VAMC, TUSCALOOSA, AL.
VAF 10-1000 DISCHARGE SUMMARY

Robert R. [unclear]
R.H.M., M.D.

[Signature]
R.H.M., M.D.

RECEIVED

NOV 27 1968



ADDENDUM

20

VETERANS ADMINISTRATION

RATING DECISION

1. REGIONAL OFFICE NO. 2. TYPE OF RATING 3. ORIGINAL DISABILITY RATING? 4. VETERAN'S FILE NO.

222 Disability No C 29 708 311

5. VETERAN'S INITIALS AND SURNAME 6. COPY TO 7. VETERAN'S SOCIAL SECURITY NO.

E. Rancher DAV 817 84 5098

8. DATE OF CLAIM 9. DATE OF THIS RATING 10. DATE OF BIRTH 11. DATE OF DEATH

11-28-88 12-23-88 8-14-57

12. ACTIVE DUTY (Mo./day/yr.) 13. ADDL. SERVICE CODE

EOD RAD EOD RAD

14. COMBAT STATUS 15. DATE OF LAST EXAMINATION 16. DATE OF FUTURE PHYSICAL EXAMINATION (Mo./yr.) 17. EMPLOYABLE (COMPENSATION ONLY)

1: HR/9-29-88/11-2-88 No Exam Yes

18. COMPETENT 19. SPECIAL PROVISION CODE 20. NO. OF ADDITIONAL DIAGNOSTICS 21. NO. OF ADDITIONAL S/C DIAGNOSTICS

22. SPECIAL MONTHLY COMPENSATION STATUS

A. CURRENT B. BASIC SMC C. HOSPITAL SMC D. LOSS OF USE E. ANAT LOSS F. OTHER LOSS

23. NARRATIVE

Hospital report

Evaluation of schizophrenia

The veteran ^{has} ~~have~~ not been hospitalized for over 3 years prior to this admission. Prior to admission she became non compliant with medication and gradually deteriorated. She made a prompt response to being placed on effective medication with remission of psychotic signs and symptoms. She became less hostile. At the time of hospital discharge she was considered competent for VA purposes.

Entitlement to Paragraph 29, benefits is established for period of hospitalization. Pre hospital rate is restored following discharge.

VETERANS ADMINISTRATION

RATING DECISION
CONTINUATION SHEET

NAME OF VETERAN
A. E. Rancher

FILE NUMBER
C 29 708 311

Page 2 of Rating Dated: 12-23-88

9203 1. SC
PARANOID SCHIZOPHRENIA, COMPETENT
30% FROM 4-1-85 (PTE PRES)
100% FROM 9-29-88 (Paragraph 29)
30% FROM 12-1-88

5299-5257 CHONDROMALACIA PATELLA, RIGHT
10% FROM 2-8-88 (PTE AGG)

5299-5257 CHONDROMALACIA, PATELLA, LEFT
10% FROM 2-8-88 (PTE AGG)

5299 8. N.S.C. (PTE)
GENUPLARUM (C&D) *JA*

43. Bilateral factor of 1.9% added for
diagnostic codes 5299-5257 left and right.

COMB: SC
50% FROM 2-8-88
100% FROM 9-29-88 (Paragraph 29)
50% FROM 12-1-88

MEDICAL RATING SPECIALIST 25. RATING SPECIALIST 26. RATING SPECIALIST 27. P/A
W. S. Boozer, MD *J. H. Laney, 031* *E. H. Teel* *DA*
S. BOOZER, MD J. H. LANEY, 031 E. H. TEEL 28. R.B. NO.
CHP.// CHP/XI CHP.// 1

FORM 21-6796-1
1986 BP D(12-15-88) T(1:20 p.m. 1237Q)

ADDENDUM

21

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. 29 708 311 | | 5. VET'S INITIALS AND SURNAME A. E. RANCHER | | 6. COPY TO DAV | |
| 7. VET'S SOC SEC NO. 417 84 5098 | | 8. DATE OF CLAIM 7-1-91 | | 9. DATE OF THIS RATING 10-24-91 | |
| 10. DATE OF BIRTH 8-14-57 | | 11. DATE OF DEATH | | 12. ACTIVE DUTY (Mo, day, yr.) | |
| EOD | | RAD | | EOD | |
| 13. ADDL. SERVICE CODE | | 14. COMBAT STATUS 1 | | 15. DATE OF LAST EXAMINATION 9-24-91 | |
| 16. DATE OF FUTURE PHYSICAL EXAMINATION (Mo./yr.) No Exam | | 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
- I. Evaluation of service connected disabilities and entitlement to a total evaluation due to unemployability
- H. Veteran's letter received 9-12-91, and VAE report dated 9-24-91
- F. The veteran stated in her letter received 9-12-91, that she is unable to work because of her service connected disabilities. She indicates that she sits around all day long and becomes depressed and bored and has nothing constructive to do. The cited VA examination report shows the veteran recited her history concerning her service connected disabilities. During the mental status examination, the veteran was cooperative and the data presented appeared to be

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: 10-24-91

reliable. The veteran's mood and affect was within normal limits and there were no suicidal thoughts or plans. She was oriented to time, place and person and memory for recent and remote events was intact. There were no delusions or hallucinations and the veteran's insight and judgement are impaired. She is shown to be competent for VA purposes. The veteran is on medications for her nervous condition and the examiner indicated the veteran's ability to work appears to be questionable. He indicated there is no social impairment at the present time.

On the examination for the veteran's knees, she was shown to be 5 ft., 6 in. tall and weighs 254 lb. Her gait is noted to be normal as well as her pace. Examination of the right knee revealed the lower aspect of the right knee is slightly tender medially and laterally to palpation. There was no gross deformity noted. There was full extension and flexion. The veteran had vague discomfort at the maximum range of motion on flexion. There was an initial pop on initiation of flexion and a fine crepitus on extension. There was no swelling noted. Examination of the left knee revealed no soft tissue swelling, heat or erythema. The veteran had full range of motion and there was slight tenderness inferiorly, both medially and laterally to palpation. There was no gross deformity. There was fine crepitus on extension inconsistently. Examination of the knees revealed good ligament stability bilaterally. X-rays of the knees revealed no significant abnormalities.

No change is warranted in the 30% evaluation for the veteran's service connected nervous condition because the medical evidence fails to show considerable impairment of social and industrial adaptability. Also, no change is warranted in the evaluation for the veteran's bilateral knee condition because the right and left knee disability is not shown to be moderately disabling. The medical evidence fails to show the veteran is unemployable based solely on account of her service connected disabilities and entitlement to a total evaluation due to individual unemployability is denied.

1. SC

DEPARTMENT OF VETERANS AFFAIRS

RATING DECISION
CONTINUATION SHEET

FILE NUMBER
C 29 708 311

NAME OF VETERAN
A. E. RANCHER

Page 3 of Rating Dated: 10-24-91

9203

PARANOID SCHIZOPHRENIA, COMPETENT
30% FROM 9-1-91 (PTE PRES)

5299-5257

CHONDROMALACIA PATELLAR, RIGHT
10% FROM 2-8-88 (PTE AGG)

5299-5257

CHONDROMALACIA PATELLAR, LEFT
10% FROM 2-8-88 (PTE AGG)

8. N.S.C. (PTE)

5299

GENUVARUM (C&D)

COMB:

SC
50% FROM 9-1-91

43. Bilateral factor of 1.9% added for
diagnostic codes 5299-5257 left and right.

18B. Individual unemployability not found.

24. MEDICAL RATING
SPECIALIST

T. S. BOOZER, MD

CHP.//

25. RATING SPECIALIST

P. C. NICKERSON

CHP/X/

26. RATING SPECIALIST

E. K. COLE 042

CHP.//

27. P/A

28. R.B.NO

1



ADDENDUM

22

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. RANCHER | | 6. COPY TO | |
| | | | | 7. VET'S SOC SEC NO. 417 84 5098 | |
| 8. DATE OF CLAIM 1-11-93 | | 9. DATE OF THIS RATING 3-11-93 | | 10. DATE OF BIRTH 8-14-57 | |
| | | | | 11. DATE OF DEATH | |
| | | 12. ACTIVE DUTY (Mo, day, yr.) | | 13. ADDL. SERVICE CODE | |
| EOD | | RAD | | EOD | |
| | | | | RAD | |
| 14. COMBAT STATUS | | 15. DATE OF LAST EXAMINATION OPT 1-7-93 | | 16. DATE OF FUTURE PHYSICAL EXAMINATION (Mo./yr.) No Exam | |
| | | | | 17. EMPLOYABLE (Compensation only) | |
| 18. COMPETENT | | 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. 21-4138 received 1-11-93
- I. Increased evaluation for SC nervous condition
- K. Tuscaloosa VAMC OPT 2-19-92, through 1-7-93, and VAR 9-24-91
- F. VA exam in 1991 showed the examiner's opinion was that it was doubtful whether the veteran was able to work. Treatment in February and May of 1992 indicated the veteran was improved and coping with her situation well. In 9-92 she was going to rehabilitation school but was experiencing boredom and occasional irritability because she was living alone. Previously she had lived with her mother and brother. In late October and November she was having sleeping problems and panic attacks with increasing psychotic symptoms after having lived alone for three to four months. Examiner expressed the

RATING DECISION
CONTINUATION SHEET

FILE NUMBER
C 29 708 311

NAME OF VETERAN
A. E. RANCHER

Page 2 of Rating Dated: 3-11-93

opinion that she was probably unable to withstand the stresses of employment and handled her situation by trying to avoid all stressful situations. In December 1992 she appeared to have some insight into her problem as she was aware when her paranoia was starting but unable to control it. She said the medications were of help. In January 1993 she wanted an increase in her Sinequan because it helped her to sleep. She gets fearful at night and was not going to sleep until 2 and 3 a.m. in the morning.

D. Entitlement to an increased evaluation is established from the date of claim. She is shown to have a considerable employment handicap due to her nervous condition.

1. SC

9203 PARANOID SCHIZOPHRENIA, COMPETENT
30% FROM 9-1-91
50% FROM 1-11-93 (PTE PRES)

5299-5257 CHONDROMALACIA PATELLA, RIGHT
10% FROM 2-8-88 (PTE AGG)

5299-5257 CHONDROMALACIA PATELLA, LEFT
10% FROM 2-8-88 (PTE AGG)

8. M.S.C. (PTE)

5299 GENU VARUM (C&D)

5295 RESIDUALS OF BACK INJURY

COMB: SC
50% FROM 9-1-91
60% FROM 1-11-93

43. Bilateral factor of 1.9% added for diagnostic codes 5299-5257 left and right.

18B. Individual unemployability not found.

| 24.MEDICAL RATING SPECIALIST | 25.RATING SPECIALIST | 26.RATING SPECIALIST | 27.P/A |
|------------------------------|----------------------|----------------------|------------|
| <i>T.S. Boozer</i> | <i>W.A. Maske</i> | <i>S.T. Camp</i> | SDVA |
| T. S. BOOZER, MD- | W. A. MASKE | S. T. CAMP 007 | 28.R.B.NO. |
| CHP.// | CHP/X/ | CHP.// | 1 |

ADDENDUM

23

PSYCHIATRIC REVIEW TECHNIQUE

10 Allison E. Rancher

SSN 417-84-509D

Assessment is For:

Current Evaluation

12 Mo. After Onset:

Date Last Insured:

Other:

to

Reviewer's Signature

[Signature] Date 11/2/88

PRIVACY ACT NOTICE: The information requested on this form is authorized by section 223 and section 1633 of the Social Security Act. The information provided will be used in making a decision on this claim. Completion of this form is mandatory in disability claims involving mental impairments. Failure to complete this form may result in a delay in processing the claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with federal laws requiring the exchange of information between Social Security and another agency.

I. MEDICAL SUMMARY

A. Medical Disposition(s):

- 1. No Medically Determinable Impairment
- 2. Impairment(s) Not Severe
- 3. Meets Listing 12.03 A/344/612 (Cite Listing and subsection)
- 4. Equals Listing _____ (Cite Listing and subsection)
- 5. Impairment Severe But Not Expected to Last 12 Months
- 6. RFC Assessment Necessary (i.e., a severe impairment is present which does not meet or equal a listed impairment)
- 7. Referral to Another Medical Specialty (necessary when there is a coexisting nonmental impairment) (Except for OHA reviewers)
- 8. Insufficient Medical Evidence (i.e., a programmatic documentation deficiency is present) (Except for OHA reviewers)

B. Category(ies) Upon Which the Medical Disposition(s) is Based:

- 1. 12.02 Organic Mental Disorders
- 2. 12.03 Schizophrenic, Paranoid and other Psychotic Disorders
- 3. 12.04 Affective Disorders
- 4. 12.05 Mental Retardation and Autism
- 5. 12.06 Anxiety Related Disorders
- 6. 12.07 Somatoform Disorders
- 7. 12.08 Personality Disorders
- 8. 12.09 Substance Addiction Disorders

322

II. DOCUMENTATION OF FACTORS THAT EVIDENCE THE DISORDER (COMMENT ON EACH BROAD CATEGORY OF DISORDER.)

A. 12.02 Organic Mental Disorders

- No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)
- Psychological or behavioral abnormalities associated with a dysfunction of the brain . . . as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

- 1. Disorientation to time and place
- 2. Memory impairment
- 3. Perceptual or thinking disturbances
- 4. Change in personality
- 5. Disturbance in mood
- 6. Emotional lability and impairment in impulse control
- 7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.
- 8. Other

B. 12.03 Schizophrenic, Paranoid and other Psychotic Disorders

- No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)
- Psychotic features and deterioration that are persistent (continuous or intermittent), as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

- 1. Delusions or hallucinations *Grandiose paranoid delusions*
- 2. Catatonic or other grossly disorganized behavior
- 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect, or
 - b. Flat affect; or
 - c. Inappropriate affect. *Considerable elusivity*
- 4. Emotional withdrawal and/or isolation
- 5. Other *Hostile affect*

322

12.04 Affective Disorders

No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

Disturbance of mood, accompanied by a full or partial manic or depressive syndrome, as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities, or
- b. Appetite disturbance with change in weight, or
- c. Sleep disturbance, or
- d. Psychomotor agitation or retardation, or
- e. Decreased energy, or
- f. Feelings of guilt or worthlessness, or
- g. Difficulty concentrating or thinking, or
- h. Thoughts of suicide, or
- i. Hallucinations, delusions or paranoid thinking

2. Manic syndrome characterized by at least three of the following:

- a. Hyperactivity, or
- b. Pressures of speech, or
- c. Flight of ideas, or
- d. Inflated self-esteem, or
- e. Decreased need for sleep, or
- f. Easy distractability, or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized, or
- h. Hallucinations, delusions or paranoid thinking

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

4. Other

322

D. 12.05 Mental Retardation Autism

- No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)
- Significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22), or pervasive developmental disorder characterized by social and significant communicative deficits originating in the developmental period, as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

- 1. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded*
- 2. A valid verbal, performance, or full scale I.Q. of 59 or less*
- 3. A valid verbal, performance, or full scale I.Q. of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function*
- 4. A valid verbal, performance, or full scale I.Q. of 60 to 69 inclusive or in the case of autism, gross deficits of social and communicative skills*
- 5. Other Probable borderline Intelligence

*NOTE: Items 2, 3, and 4 correspond to Listings 12.05A, 12.05B, 12.05C, and 12.05D, respectively.

E. 12.06 Anxiety Related Disorders

- No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)
- Anxiety is the predominant disturbance or anxiety experienced in the attempt to master symptoms, as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

- 1. Generalized persistent anxiety accompanied by three of the following:
 - a. Motor tension, or
 - b. Autonomic hyperactivity, or
 - c. Apprehensive expectation, or
 - d. Vigilance and scanning.
- 2. A persistent irrational fear of a specific object, activity or situation which results in a compelling desire to avoid the dreaded object, activity, or situation
- 3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror, and sense of impending doom occurring on the average of at least once a week
- 4. Recurrent obsessions or compulsions which are a source of marked distress
- 5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress
- 6. Other _____

12.07 Somatoform Disorders

- No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)
- Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms, as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

1. A history of multiple physical symptoms of several years duration beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly
2. Persistent nonorganic disturbance of one of the following:
 - a. Vision, or
 - b. Speech, or
 - c. Hearing, or
 - d. Use of a limb, or
 - e. Movement and its control (e.g., coordination disturbances; psychogenic seizures, akinesia, dyskinesia), or
 - f. Sensation (e.g., diminished or heightened)
3. Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury
4. Other _____

G. 12.08 Personality Disorders

- No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)
- Inflexible and maladaptive personality traits which cause either significant impairment in social or occupational functioning or subjective distress, as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

1. Seclusiveness or autistic thinking
2. Pathologically inappropriate suspiciousness or hostility
3. Oddities of thought, perception, speech and behavior
4. Persistent disturbances of mood or affect
5. Pathological dependence, passivity, or aggressivity
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior
7. Other _____

H. 12.09 Substance Addiction Disorders: Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

Present — Absent — Insufficient Evidence

If present, evaluate under one or more of the most closely applicable listings:

1. Listing 12.02—Organic mental disorders*
2. Listing 12.04—Affective disorders*
3. Listing 12.06—Anxiety disorders*
4. Listing 12.08—Personality disorders*
5. Listing 11.14—Peripheral neuropathies*
6. Listing 5.05—Liver damage*
7. Listing 5.04—Gastritis*
8. Listing 5.08—Pancreatitis*
9. Listing 11.02 or 11.03—Seizures*
10. Other _____

*NOTE: Items 1, 2, 3, 4, 5, 6, 7, 8, and 9 correspond to Listings 12.09A, 12.09B, 12.09C, 12.09D, 12.09E, 12.09F, 12.09G, 12.09H, and 12.09I, respectively. If items 1, 2, 3, or 4 are checked, only the numbered items in subsections IIIA, IIIC, IIIE, or IIIG of the form need be checked. The first two blocks under the disorder heading in those subsections need not be checked.

V. RATING OF IMPAIRMENT SEVERITY

A. "B" Criteria of the Listings

Indicate to what degree the following functional limitations (which are found in paragraph B of listings 12.02-12.04 and 12.06-12.08 and paragraph D of 12.05) exist as a result of the individual's mental disorder(s).

NOTE: Items 3 and 4 below are more than measures of frequency. Describe in part II of this form (Reviewer's Notes) the duration and effects of the deficiencies (item 3) or episodes (item 4). Please read carefully the instructions for the completion of this section.

Specify the listing(s) (i.e., 12.02 through 12.09) under which the items below are being rated 12-03

| FUNCTIONAL LIMITATION | DEGREE OF LIMITATION | | | | | |
|---|--------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|---|
| | None | Slight | Moderate | Marked* | Extreme | |
| 1. Restriction of Activities of Daily Living | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Insufficient Evidence <input type="checkbox"/> |
| 2. Difficulties in Maintaining Social Functioning | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Insufficient Evidence <input type="checkbox"/> |
| 3. Deficiencies of Concentration, Persistence or Pace Resulting in Failure to Complete Tasks in a Timely Manner (in work settings elsewhere) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Insufficient Evidence <input type="checkbox"/> |
| 4. Episodes of Deterioration or Decompensation in Work or Work-Like Settings Which Cause the Individual to Withdraw from that Situation or to Experience Exacerbation of Signs and Symptoms (which may include Deterioration of Adaptive Behaviors) | <input type="checkbox"/> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Insufficient Evidence <input type="checkbox"/> |

B. Summary of Functional Limitation Rating for "B" Criteria

Indicate the number of the above functional limitations manifested at the degree of limitation that satisfies the listings. (The number in the box must be at least 2 to satisfy the requirements of paragraph B in Listings 12.02, 12.03, 12.04, and 12.06 and paragraph D in 12.05; and at least 3 to satisfy the requirements in paragraph B in Listings 12.07 and 12.08.)

322

*Degree of limitation that satisfies the Listings: Extreme, Constant and Continual also satisfy that requirement.



ADDENDUM

24

| | | | | | | | |
|-----------------|-----|-----|------|--------------------|----|----|------------------|
| PATIENT NAME | AGE | SEX | RACE | SOCIAL SECURITY NO | CI | SD | NAME OF FACILITY |
| RANCHER, Alison | 27 | F | B | 417-84-5098 | | | VAMC, Tusc., AL. |

DIAGNOSES List the principal diagnosis, the principal diagnosis is that condition established after study to be chiefly responsible for occasioning the admission of the patient. Then, in order of clinical importance, list other diagnoses, and conditions, or situations which are treated or observed subsequently which affect the length of stay. Prefix the principal diagnosis with an alpha character "A". Prefix the diagnosis responsible for the major part of the length of stay (DXIS) with an alpha character "X". DO NOT ABBREVIATE DIAGNOSES.)

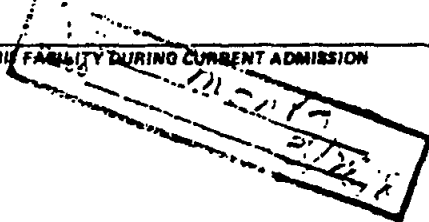
1. Paranoid schizophrenia.
2. Calculus teeth

| |
|-----------------|
| DIAGNOSTIC CODE |
| |

OTHER CLINICAL DIAGNOSES NOTED BUT NOT TREATED (Include autopsy diagnoses not listed as causal above)

OPERATIONS PROCEDURES PERFORMED AT THIS FACILITY DURING CURRENT ADMISSION

| | |
|------|---------------------------|
| DATE | OPERATION PROCEDURES CODE |
| | |



SUMMARY This statement should include, if applicable, history, pertinent physical findings, provisional diagnosis, course in hospital, treatment given, condition at release, date patient is capable of returning to full employment, period of convalescence, if required; recommendations for follow-up treatment including date of first follow-up patient visit, where applicable, medications furnished at release, any specific instructions given to the patient and/or family, including physical activity limitations, competency opinion when required, rehabilitation potential; and, name of Nursing Home or other receiving facility, if known.

CHIEF COMPLAINT: Patient was seen in the Anniston Medical Center. ~~He~~ ^{She} was striking out, was abusive, and was uncommunicative. ~~He~~ ^{She} had an acute psychotic episode with bizarre behavior.

HISTORY OF THE PRESENT ILLNESS: The patient had a previous admission in the Army Base hospital in California for 2 months while she was still on active duty. At that time it was stated, "I gained a lot of stress trying to be promoted to captain, and had a nervous breakdown." She was later returned to active duty. However, she felt that someone was always watching her, and she decided to be discharged from the service. She was never homicidal or suicidal. She experienced auditory hallucinations, where she hears little voices on the telephone, and was frightened to go into her bedroom. She thought that there may be somebody there in her bedroom. Also, she was frightened to get her mail out of the mail box. She was also delusional about the television, and felt that the television is able to control her. No alcohol or drug problem. The patient was preoccupied with religion, and reads the Bible a lot. This is the first admission to this facility. Prior to admission she was acting strange and was argumentative, and has been dieting, and lost about 10 lb. in a week. She was not eating right. She was mixed up, and stated, "I love you even though you killed Tony." Tony was a boyfriend of patient's who married someone else, and apparently patient did not get over this.

| | | | | | | | |
|----------------|----------------|-----------------|----------------|--------------|----------|-------------------------------|--|
| ADMISSION DATE | DISCHARGE DATE | TYPE OF RELEASE | INPATIENT DAYS | ABSENCE DAYS | WARD NO. | SIGNATURE PHYSICIAN / DENTIST | SIGNATURE (Initials of approving MD/DDS) |
| 1-29-85 | 3-20-85 | OPT-NSC | 42 | 6 | 40A | KAMAL NAGI | M.D. |

Encl 19

PSYCHIATRIC REVIEW TECHNIQUE

Name Allison E. Rancher SSN 417-84-509D

Assessment is For: Current Evaluation 12 Mo. After Onset: _____

Date Last Insured: _____ Other: _____ to _____

Reviewer's Signature [Signature] Date 11/2/08

PRIVACY ACT NOTICE: The information requested on this form is authorized by section 223 and section 1633 of the Social Security Act. The information provided will be used in making a decision on this claim. Completion of this form is mandatory in disability claims involving mental impairments. Failure to complete this form may result in a delay in processing the claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with federal laws requiring the exchange of information between Social Security and another agency.

I. MEDICAL SUMMARY

A. Medical Disposition(s):

1. No Medically Determinable Impairment
2. Impairment(s) Not Severe
3. Meets Listing 12.03 A/24/012 (Cite Listing and subsection)
4. Equals Listing _____ (Cite Listing and subsection)
5. Impairment Severe But Not Expected to Last 12 Months
6. RFC Assessment Necessary (i.e., a severe impairment is present which does not meet or equal a listed impairment)
7. Referral to Another Medical Specialty (necessary when there is a coexisting nonmental impairment) (Except for OHA reviewers)
8. Insufficient Medical Evidence (i.e., a programmatic documentation deficiency is present) (Except for OHA reviewers)

B. Category(ies) Upon Which the Medical Disposition(s) is Based:

1. 12.02 Organic Mental Disorders
2. 12.03 Schizophrenic, Paranoid and other Psychotic Disorders
3. 12.04 Affective Disorders
4. 12.05 Mental Retardation and Autism
5. 12.06 Anxiety Related Disorders
6. 12.07 Somatoform Disorders
7. 12.08 Personality Disorders
8. 12.09 Substance Addiction Disorders

III. DOCUMENTATION OF FACTORS THAT EVIDENCE THE DISORDER (COMMENT ON EACH BROAD CATEGORY OF DISORDER.)

A. 12.02 Organic Mental Disorders

- No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)
- Psychological or behavioral abnormalities associated with a dysfunction of the brain . . . as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

- 1. Disorientation to time and place
- 2. Memory impairment
- 3. Perceptual or thinking disturbances
- 4. Change in personality
- 5. Disturbance in mood
- 6. Emotional lability and impairment in impulse control
- 7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.
- 8. Other _____

B. 12.03 Schizophrenic, Paranoid and other Psychotic Disorders

- No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)
- Psychotic features and deterioration that are persistent (continuous or intermittent), as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

- 1. Delusions or hallucinations *— paranoid delusions*
- 2. Catatonic or other grossly disorganized behavior
- 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect, or
 - b. Flat affect, or
 - c. Inappropriate affect *Considerable elusivity*
- 4. Emotional withdrawal and/or isolation
- 5. Other *Labile affect*

IV. RATING OF IMPAIRMENT SEVERITY

A. "B" Criteria of the Listings

Indicate to what degree the following functional limitations (which are found in paragraph B of listings 12.02-12.04 and 12.06-12.08 and paragraph D of 12.05) exist as a result of the individual's mental disorder(s).

NOTE: Items 3 and 4 below are more than measures of frequency. Describe in part II of this form (Reviewer's Notes) the duration and effects of the deficiencies (item 3) or episodes (item 4). Please read carefully the instructions for the completion of this section.

Specify the listing(s) (i.e., 12.02 through 12.09) under which the items below are being rated 12-03

| FUNCTIONAL LIMITATION | DEGREE OF LIMITATION | | | | | |
|---|-----------------------------------|------------------------------------|--|---|---------------------------------------|---|
| 1. Restriction of Activities of Daily Living | None <input type="checkbox"/> | Slight <input type="checkbox"/> | Moderate <input type="checkbox"/> | Marked* <input checked="" type="checkbox"/> | Extreme <input type="checkbox"/> | Insufficient Evidence <input type="checkbox"/> |
| 2. Difficulties in Maintaining Social Functioning | None <input type="checkbox"/> | Slight <input type="checkbox"/> | Moderate <input type="checkbox"/> | Marked* <input checked="" type="checkbox"/> | Extreme <input type="checkbox"/> | Insufficient Evidence <input type="checkbox"/> |
| 3. Deficiencies of Concentration, Persistence or Pace Resulting in Failure to Complete Tasks in a Timely Manner (in work settings or elsewhere) | Never <input type="checkbox"/> | Seldom <input type="checkbox"/> | Often <input type="checkbox"/> | Frequent* <input checked="" type="checkbox"/> | Constant <input type="checkbox"/> | Insufficient Evidence <input type="checkbox"/> |
| 4. Episodes of Deterioration or Decompensation in Work or Work-Like Settings Which Cause the Individual to Withdraw from that Situation or to Experience Exacerbation of Signs and Symptoms (which may include Deterioration of Adaptive Behaviors) | Never <input type="checkbox"/> | | Once or Twice <input checked="" type="checkbox"/> | Repeated* (three or more) <input type="checkbox"/> | Continual <input type="checkbox"/> | Insufficient Evidence <input type="checkbox"/> |

B. Summary of Functional Limitation Rating for "B" Criteria

Indicate the number of the above functional limitations manifested at the degree of limitation that satisfies the listings. (The number in the box must be at least 2 to satisfy the requirements of paragraph B in Listings 12.02, 12.03, 12.04, and 12.06 and paragraph D in 12.05; and at least 3 to satisfy the requirements in paragraph B in Listings 12.07 and 12.08.)

*Degree of limitation that satisfies the Listings: Extreme, Constant and Continual also satisfy that requirement.

ADDENDUM

25



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

IN THE APPEAL OF
ALLISON E. RANCHER

C 29 708 311

DOCKET NO. 96-29 508

)
)
)

DATE FEB 26 1999

On appeal from the
Department of Veterans Affairs Regional Office in Montgomery, Alabama

THE ISSUE

Entitlement to a total rating based on individual unemployability due to service-connected disabilities.

REPRESENTATION

Appellant represented by: Disabled American Veterans

WITNESS AT HEARING ON APPEAL

Appellant

ATTORNEY FOR THE BOARD

D. Jeffers, Associate Counsel



ADDENDUM

26

DEPARTMENT OF VETERANS AFFAIRS

Regional Office
345 Perry Hill Road
Montgomery AL 36109-3798

322

AUG 23 1999

ALLISON E RANCHER
PO BOX 763
EUTAW AL 35462

In Reply Refer To: 322/21T1
C 29-708-311
RANCHER, A E

Dear Ms. Rancher:

This letter supplements the computer generated letter you recently received concerning the increase in your service connected disability compensation benefits.

The enclosed rating decision on your claim states the reasons and bases for this decision, as well as the evidence considered.

Please see the enclosed VA Form 4107 which explains your procedural and appellate rights.

Sincerely yours,

J. M. DOWNES
Service Center Manager

Enclosure(s): Rating Decision
VA Form 4107

cc: DAV

21T1/232

eav/6

377024
10/10
2002
500.99

FILE COPY

Rating Decision*Department of Veterans Affairs
Montgomery Regional Office*Page 1
08/16/99

| | | | |
|--------------------------------------|------------------------------|-----------------------------------|-----------------------------------|
| NAME OF VETERAN ALLISON E RANCHER | VA FILE NUMBER 29 708 311 | SOCIAL SECURITY NR 417-84-5098 | POA Disabled American Veterans |
|--------------------------------------|------------------------------|-----------------------------------|-----------------------------------|

ISSUE:

1. Evaluation of chondromalacia patella right knee currently evaluated as 10 percent disabling.
2. Evaluation of chondromalacia patella left knee currently evaluated as 10 percent disabling.
3. Evaluation of paranoid schizophrenia competent currently evaluated as 50 percent disabling.

EVIDENCE:

VA examination dated May 10, 1999, from the VA Medical Center, Tuscaloosa.
Outpatient treatment reports from October 25, 1995, to October 29, 1998, from the VA Medical Center, Tuscaloosa.

DECISION:

1. Evaluation of chondromalacia patella right knee, which is currently 10 percent disabling, is continued.
2. Evaluation of chondromalacia patella left knee, which is currently 10 percent disabling, is continued.
3. Evaluation of paranoid schizophrenia competent, which is currently 50 percent disabling, is increased to 100 percent effective May 10, 1999, from the date of the VA examination..

REASONS AND BASES:

1. The evaluation of chondromalacia patella right knee is continued as 10 percent disabling. An evaluation of 10 percent is granted for leg flexion which is limited to 45 degrees. A higher evaluation of 20 percent is not warranted unless evidence demonstrates leg flexion which is limited to 30 degrees.

The outpatient treatment records shows complaints in the knees. The VA examination shows the legs are equal and the patella movement is normal. There is non tenderness of the joint in the patella. the circumference of the joint is 18 inches. There is no evidence of fluid in the joint. The anterior Drawer test is negative and the McMurray test is negative. The range of motion is 0 to 100 degrees with pain. Her gait is limping due to foot infection. It also shows she uses a brace. There is no instability shown. The prior evaluation is confirmed and continued.

2. The evaluation of chondromalacia patella left knee is continued as 10 percent disabling. An evaluation of 10 percent is granted for leg flexion which is limited to 45 degrees. A higher evaluation of 20 percent is not warranted unless evidence demonstrates leg flexion which is limited to 30 degrees.

The outpatient treatment records shows complaints in the knees. The VA examination shows the legs are equal and the patella movement is normal. There is non tenderness of the joint in the patella. the circumference of the joint is 18 inches. There is no evidence of fluid in the joint. The anterior Drawer test is negative and the McMurray test is negative. The range of motion is 0 to 90 degrees with pain. Her gait is

Rating Decision*Department of Veterans Affairs
Montgomery Regional Office*Page 2
08/16/99

NAME OF VETERAN

ALLISON E RANCHER

VA FILE NUMBER

29 708 311

SOCIAL SECURITY NR

417-84-5098

POA

Disabled American Veterans

limping due to foot infection. It also shows she uses a brace. There is no instability shown. The prior evaluation is confirmed and continued.

3. The evaluation of paranoid schizophrenia competent is increased to 100 percent disabling effective May 10, 1999. An evaluation of 100 percent is assigned whenever there is evidence of 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. Since there is a likelihood of improvement, the assigned evaluation is not considered permanent and is subject to a future review examination.

The outpatient treatment records shows the veteran had appropriate goal directed speech. There was no psychotic thinking and little paranoia. She states she hears voice but is able to control them and her medication is helping. The veteran participates in crafts project with others, participated in group discussion and in warm up exercises for aerobic. She interacts with her peers. The VA examination shows she looks her stated age and was dressed appropriately. She cooperated during the interview. Auditory hallucination and some paranoid delusion appear to be present. She denies suicidal and homicidal ideation's. She is able to maintain minimal personal hygiene and other basic activities of daily living. She is fully oriented and her long term memory is intact. Her short term memory, concentration, and judgment are severely impaired. Speech is slow and pressured. her mood is depressed and the sleep impairment is chronic in nature. Her symptoms appear to be frequent and severe with no period of remission. The veteran is impaired both socially and occupationally and her GAF is 35. She is competent for VA purposes.

| | | | | |
|---------------------------------------|--|--|-----------------------------------|-----------------------------------|
| Rating Decision | | <i>Department of Veterans Affairs Montgomery Regional Office</i> | | Page 3 08/16/99 |
| NAME OF VETERAN LILLISON E RANCHER | | VA FILE NUMBER 29 708 311 | SOCIAL SECURITY NR 417-84-5098 | POA Disabled American Veterans |

| | | | | | | | | |
|------------------------------|-----|-----|----------------|-------------------------|---------------|------------------------|--------------------------|------------|
| ACTIVE DUTY (Month/Day/Year) | | | | ADDITIONAL SERVICE CODE | COMBAT STATUS | SPECIAL PROVISION CODE | FUTURE EXAM (Month/Year) | |
| 10 | RAD | EOD | RAD | | 1 | | 0801 | |
| COPY TO: | | | EFFECTIVE DATE | BASIC | HOSPITAL | LOSS OF USE | ANAT. LOSS | OTHER LOSS |
| S | | | | | | | | |
| M | | | | | | | | |
| C | | | | | | | | |

JURISDICTION: 020;3 Claim for increase received 02-26-99.

1. SC

9203 PARANOID SCHIZOPHRENIA, COMPETENT
50% from 01-11-93 -
100% from 05-10-99 (PTEPRES)

5299-5260 CHONDROMALACIA PATELLA LEFT KNEE (formerly rated under DC 5299-5257)
10% from 02-08-88 (PTE AGG)

5299-5260 CHONDROMALACIA PATELLA RIGHT KNEE (formerly rated under DC 5299-5257)
10% from 02-08-88 (PTE AGG)

8. NSC (PTE)

9411 POST TRAUMATIC STRESS DISORDER SECONDARY TO SEXUAL HARRASMENT

7699-7618 DAMAGE TO REPRODUCTIVE ORGAN SECONDARY TO SEXUAL HARRASMENT

5299 GENUVARUM (C&D)

5295 RESIDUALS OF BACK INJURY

COMB SC: 60% from 01-11-93
100% from 05-10-99

Rating Decision

*Department of Veterans Affairs
Montgomery Regional Office*

Page 4
08/16/99

NAME OF VETERAN

VA FILE NUMBER

SOCIAL SECURITY NR

POA

ELISON E RANCHER

29 708 311

417-84-5098

Disabled American Veterans

18B. IU not found

43. Bilateral factor of 1.9% added for diagnostic code 5299-5257 left and right.



J R TAYLOR, RATING SPECIALIST

J. P. BARED, Rating Specialist

029708311-990816.RTG



ADDENDUM

27

| | | | | |
|---|------------------------------|--|-----------------------------------|--------------------|
| Supplemental Statement of the Case | | <i>Department of Veterans Affairs Montgomery Regional Office</i> | | Page 1 08/16/99 |
| 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 individual unemployability.

EVIDENCE:

VA examination dated May 10, 1999, from the VA Medical Center, Tuscaloosa.
Outpatient treatment reports from October 25, 1995, to October 29, 1998, from the VA Medical Center, 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 evidence does not show that prior to May 10, 1999, an increased evaluation is warranted in her service connected disabilities which would increased evaluation for entitlement to unemployability based on her schedular evaluation. Effective May 10, 1999, the date of the increase to a schedular evaluation of 100 percent the issue of individual unemployability is a mute point.

ADDENDUM

28

 Department of Veterans Affairs

APPEAL TO BOARD OF VETERANS' APPEALS

IMPORTANT: Read the attached instructions before you fill out this form. VA also encourages you to get assistance from your representative in filling out this form.

| | | |
|--|---|--|
| 1. NAME OF VETERAN (Last Name, First Name, Middle Initial) RANCHER, ALLISON E. | 2. CLAIM FILE NO. (Include prefix) C 29 708 311 | 3. INSURANCE FILE NO., OR LOAN NO. N/A |
|--|---|--|

4. I AM THE:

VETERAN
 VETERAN'S WIDOWER
 VETERAN'S CHILD
 VETERAN'S PARENT
 OTHER (Specify)

| 5. TELEPHONE NUMBERS | | 6. MY ADDRESS IS: (Number & Street or Post Office Box, City, State & ZIP Code) |
|--|---|---|
| A. HOME (Include Area Code) (205) 372-4356 | B. WORK (Include Area Code) N/A | |
| 7. IF I AM NOT THE VETERAN, MY NAME IS: (Last Name, First Name, Middle Initial) N/A | | |

8. HEARING

IMPORTANT: Read the information about this block in paragraph 6 of the attached instructions. This block is used to request a Board of Veterans' Appeals hearing. DO NOT USE THIS FORM TO REQUEST A HEARING BEFORE A VA REGIONAL OFFICE HEARING OFFICER. Check one (and only one) of the following boxes:

A. I DO NOT WANT A BVA HEARING.
 B. I WANT A BVA HEARING IN WASHINGTON, DC.
 C. I WANT A BVA HEARING AT A LOCAL VA OFFICE BEFORE A MEMBER, OR MEMBERS, OF THE BVA.
 (Not available at Washington, DC, or Baltimore, MD, Regional Offices.)

9. THESE ARE THE ISSUES I WANT TO APPEAL TO THE BVA: (Be sure to read the information about this block in paragraph 6 of the attached instructions.)

A. I WANT TO APPEAL ALL OF THE ISSUES LISTED ON THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENTS OF THE CASE THAT MY LOCAL VA OFFICE SENT TO ME.
 B. I HAVE READ THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE I RECEIVED. I AM ONLY APPEALING THESE ISSUES: (List below.)

10. HERE/IS WHY I THINK THAT VA DECIDED MY CASE INCORRECTLY: (Be sure to read the information about this block in paragraph 6 of the attached instructions.)

The effective date assigned is not correct
I have been totally disabled since I filed
my claim in July 1995

(Continue on the back, or attach sheets of paper, if you need more space.)

| | | | |
|---|---------------------------------|--|----------|
| 11. SIGNATURE OF PERSON MAKING THIS APPEAL <i>Allison E. Rancher</i> | 12. DATE <i>Oct 24, 1999</i> | 13. SIGNATURE OF APPOINTED REPRESENTATIVE, IF ANY (Not required if signed by appellant. See paragraph 6 of the instructions.) | 14. DATE |
|---|---------------------------------|--|----------|

DUCKETT 9922607



ADDENDUM

29



Social Security Administration

Refer To:
Name: Allison E. Rancher
SSN: 417-84-5098

P O Box 03899
1118 Greensboro Avenue
Tuscaloosa, AL 35403-8999
Phone: (205) 349-4863
Fax: (205) 758-4729
Office Hours: 9:00 am to 4:30 pm

Date: June 6, 2000

Ed Voith
VA Regional Office
345 Perry Hill Road
Montgomery, Al 36109

Pull
29 708 311

Dear Mr. Voith:

Ms. Allison E. Rancher has authorized Social Security to release copies of her medical records contained in her file. Those copies are attached.

If you have any questions or require further assistance, please do not hesitate to contact me.

Sincerely,

Gavin R. Killam
Assistant District Manager

Enclosure

Rec. 6/13
6-30-00
[Signature]

RANCHER, ALLISON E

SSN:

92 - 08 Jane B Trimm

SSA
LEW

CPD DATE:

ONSET DATE: 1/5/85

CASE FINDINGS AT CPD 1/2/88

Admitted 9/88 by sheriff.
History of paranoid delus.
(Met last at 12.03 A1,3 at onset 1/5/85)
Now complaint is mela
not sleeping; threatening mother
alert, oriented X3
hyperverbal, rambling, pressured speech

Physical: 5'6"; 231# BP 112/90.
Low back discomfort, pain in both knees
Otherwise PE wnl

Mental CE: CURRENT FINDINGS

Appropriately dressed; good grooming,
Well oriented
Thought + conversation appropriate
No loose associations or confusion
Mood / affect appropriate
Experiences and - halluc but not visual halluc
History of delusions while hospitalized
Anxious, had trouble concentrating, no confusion
Hospitalized 7/91 Diagn. Schiz. affective D.C.
Adaptation disorder - depressed minor
Followed by VA Psych clinic
Mood swings (when asked)
Physical 65 1/2"; 276# 110/90
Able to squat, rise, stand on toes, heels
touch toes, ROM nl in all joints -
Crepitation in knees
Strength 5+/5+; neuro - nl
No diabetic Complications

OVER

- M.I. HAS OCCURRED
- M.I. HAS NOT OCCURRED

SUMMARY OF FINDINGS

EXAMINER'S SIGNATURE _____

DATE _____

ADDENDUM

30

June 22, 2000

| | |
|-------------|----------|
| FILE | 170 |
| RECEIVED BY | 17/1/00 |
| DATE | 06-23-00 |
| NAME | Grant |

TO: Adjudication Officer
VA Regional Office
345 Perry Hill Rd
Montgomery, AL 36109

FROM: Ms. Allison E. Rancher C29-708-311
P.O. Box 763
Entaw, AL 35462

Dear Ladies/Gentlemen:

I (Allison E. Rancher) is submitting this letter in reference to the letter I received dated ~~Aug 1999~~ which I was granted 100% for Paroxysmal Schizophrenia for my nervous condition. However, I was not granted Individual Unemployability Status. I initially apply for Individual Unemployability in July 1995. As a result I am filing a NOTICE OF DISAGREEMENT in that I should have been



ADDENDUM

31

20/217

June 28, 2000

ATTN: Adjudication Officer
Dept of Veterans Affairs
VA Regional Office
345 Perry Hill Rd
Montgomery, AL 36109

Mr. Allison E. Rancher
Post Office Box 763
Eutaw, AL 35462

Handwritten initials and numbers: "AER", "170", and a signature.

Dear Ladies/Gentlemen:

I (Allison E. Rancher) is requesting that the letter dated 22 June 00 be withdrawn and destroyed with the Notice of Disagreement for the 100% for paranoid schizophrenia to be rated Individual Unemployability. In other words I want to keep the rating 100% for paranoid schizophrenia and I declined to have the rating change

Handwritten number: "11/21/00"

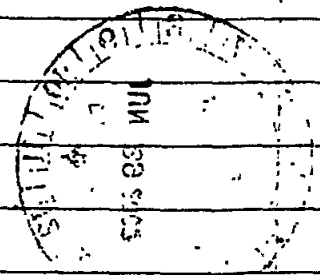
Allison E. Bancher - page 2

to Individual Unemployability status. I do have caused any trouble in this matter I am sorry.

Therefore, I want to remained 100% for paranoid schizophrenia and not be granted 100 individual Unemployability status at this time

Sincerely,

Allison E. Bancher
VA Claim # 29-708-311



ADDENDUM

32

DISABLED AMERICAN VETERANS

STATEMENT OF REPRESENTATIVE IN APPEALED CASE

(In lieu of VA Form 646)

Name

Allison E. Rancher

Claim Number

C 29 708 311

ISSUE PRESENTED FOR REVIEW

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

STATEMENT OF THE CASE

A. Nature of the Case

Appellant is seeking an earlier effective than May 10, 1999, for a 100 percent evaluation for her paranoid schizophrenia.

B. Course of Proceedings and Disposition Below

The appellant reopened her claim for a higher evaluation to include a total evaluation based on individual unemployability in July 1995. The claim was confirmed and continued at the 50 percent evaluation rate. The Disabled American Veterans filed a notice of disagreement on behalf of the veteran indicating that the evidence of record supported a total evaluation for her service-connected nervous condition, and a substantive appeal was filed a timely manner.

C. Statement of Facts

The veteran contends that she has been totally disabled since she was discharged from the military service on February 1, 1984. The veteran states that she has attempted employment several times, but was released because of her inappropriate behavior and inability to follow simple instructions.

ARGUMENT

In support of the veteran's claim for an earlier effective date, we would bring your attention to our arguments submitted April 20, 1998 on VA Form 646 at which time we argued on the veteran's behalf for individual unemployability. Inasmuch as a claim for

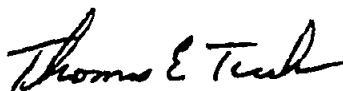
individual unemployability is a claim for an increase, we feel that those arguments support a total evaluation for the veteran's paranoid schizophrenia. Therefore, we ask the Board for an in-depth review of the veteran's VA claims folder to include those arguments as well as those presented to the Board by the National Appeals Office of the Disabled American Veterans. "The Court held in *Proscelle v. Derwinski*, 2 Vet.App. 629 (1992) that a claim for an increase is a new claim, and, therefore, not subject to the provisions of 38 U.S.C. § 7104(b) which require that an appellant submit new and material evidence before a claim will be reopened. Since a claim for an increase is a new claim, all the relevant evidence of record must be considered in order to establish which disability rating an appellant is entitled to." *Lenderman v. Principi*, 3 Vet.App. 491, 492 (1992).

Appellant asserts a preponderance of the evidence is in his favor, or at the very least, is in equipoise. When there is "significant evidence" in support of the veteran's claim, if the Board denies the claim, it must provide an adequate explanation as to why the evidence is not in "relative equipoise" so as to warrant application of the benefit-of-the-doubt rule in 38 U.S.C.A. § 5107(b). *Williams (Willie) v. Brown*, 4 Vet.App. 270, 273-74 (1993).

CONCLUSION

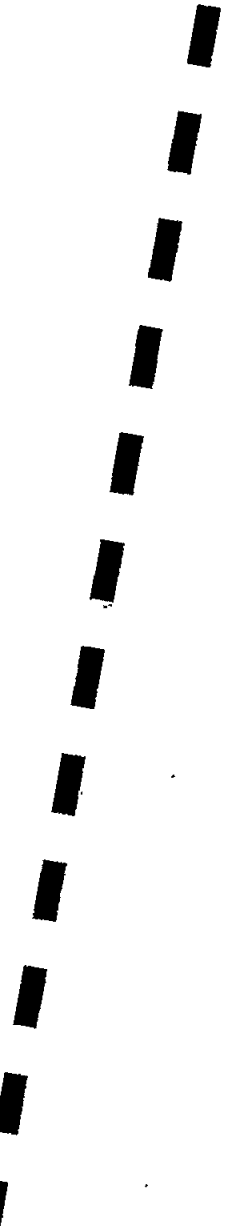
When, after consideration of all evidence and material of record in a case before the Department with respect to benefits under laws administered by the Secretary, there is an approximate balance of positive and negative evidence regarding merits of an issue material to the determination of the matter, the benefit of the doubt in resolving each such issue shall be given to the claimant. 38 U.S.C.A. § 5107(b).

Respectfully submitted,



Thomas E. Tucker
National Service Officer
Disabled American Veterans
November 8, 2000

TET:rh





ADDENDUM

33

**DISABLED AMERICAN VETERANS
NATIONAL APPEALS OFFICE
WASHINGTON DC**

)
)
)
APPELLANT'S BRIEF
)
)
)

IN THE APPEAL OF: **Rancher, Allison E.** **C 29 708 311**

DATE: **January 10, 2001**

REPRESENTED BY: **Joseph A. Rice**
National Appeals Officer
Disabled American Veterans

QUESTION AT ISSUE: Entitlement to an earlier effective date for the 100 percent rate for paranoid schizophrenia, to include individual unemployability (IU).

Introduction

MR. RICE: The Disabled American Veterans takes this opportunity to advise the Board of Veterans' Appeals that the above noted issue has been amended to include the issue of entitlement to IU. The Disabled American Veterans posits that the issue amended thereto is inextricably intertwined to the original issue of an earlier effective date for grant of 100 percent, since the veteran's service-connected disability from the onset of her reopened claim for increase caused her to be unemployable.

Therefore, the Disabled American Veterans expects the Board of Veterans' Appeals to assume jurisdiction over the amended issue of IU and cites 38 C.F.R. § 1304© as a basis for waiver of Regional Office jurisdiction. The Disabled American Veterans asserts that all necessary information to grant the benefit sought on appeals lies resident in this instant case file.

This appeal challenges the decision of the Department of Veterans Affairs Montgomery, AL. Regional Office to deny the veteran's claims for benefits identified above pursuant to the provisions codified at 38 U.S.C.A. § 7105 and 38 C.F.R. § 20.202. In this

connection, the Disabled American Veterans notes the veteran filed a timely notice of disagreement and subsequently, due to continued discord with the Agency of Original Jurisdiction's adverse determination, the veteran submitted a timely substantive appeal.

The Disabled American Veterans submits that this case is properly before the Board of Veterans' Appeals (Board) in that the veteran has submitted a well-grounded claim in accordance with the provision codified at 38 U.S.C.A. § 5107(a).

Via the continuation of her appeal, the veteran contends she is entitled to the benefits sought on appeal. Further, she maintains the evidence of record fully supports her legal and medical positions. As such, the veteran believes the issue certified before the Board should be resolved in her favor.

Statement of Facts

According to official records, the veteran provided both active and honorable military service from April 27, 1981, to February 01, 1984. The Agency of Original Jurisdiction received additional evidence in the form records from the Social Security Administration. The Agency of Original Jurisdiction issued a Supplemental Statement of the Case dated July 08, 2000.

During review of the evidentiary record, this service made note of various statements offered into the record in support of this appeal at the regional Office level. In the Disabled American Veterans opinion, the veteran has successfully articulated the essential elements of his appellate position. For the sake of brevity, the Disabled American Veterans hereby adopts, promotes, protects and incorporates the aforementioned arguments, as well as all relevant data of record, into this written presentation by reference only.

Argument

Subsequent to review of the evidentiary material on record, it is submitted that this instant appeal is fully developed and, as such, is now ready for final Board adjudicatory action. The Disabled American Veterans supports the veteran's contentions that she is indeed entitled to an earlier effective date for the assignment of the 100 percent rate, or, at the very least, entitlement to IU based upon patent and viewable symptoms related to her service-connected schizophrenia.

Moreover, the Disabled American Veterans posits that evidence contained within this case file adamantly supports the veteran's claim for an earlier effective date for the assignment of the 100 percent rate for her service-connected schizophrenia. For the record, the Disabled American Veterans notes that as early as 1991, which is earlier than the date sought by the veteran, but not the Disabled American Veterans, the records

denote, "Her ability to work appears to be questionable (see Department of Veterans' Affairs examination, which did not espouse a five-pole multiaxial assessment (MA) scale as recommended by the *DSM-IV, 1994*)." Department of Veterans' Affairs Progress notes contained within the veteran's case file dated 11/92 note the veteran's mental status as "Guarded."

The veteran submitted VA form 21-4138 (Statement in Support of Claim) dated 11/18/92, which noted, "My condition (service-connected paranoid schizophrenia) prevents me from being trained for employment, and that the condition is such that I am unemployable." The record contains a progress note dated 07/12/95 that the veteran used to reopen her claim, which denotes, "This veteran is unable to compete for or maintain gainful employment. She has not been evaluated for feasibility of vocational rehabilitation. Needs further evaluation."

Finally, the Disabled American Veterans directs the Board of Veterans' Appeals attention to the veteran's 1996 "Mental Disorders" examination, which did not culminate with a five-pole multiaxial assessment (MA) scale in accordance with the recommendation with the *DSM-IV, 1994*. To this end, that 1996 examination was not adequate for rating purposes. Nonetheless, the 1996 examination did indicate, "There is definitely social and industrial impairment. She has not worked gainfully for the last 11 to 12 years. It is very unlikely that she will be able to go back to a job where she will be gainfully employed."

The Disabled American Veterans believes the Board of Veterans' Appeals should obtain any and all vocational records held at the Regional Office level that might be relevant to the issue at hand. More succinctly, the Disabled American Veterans does not want the case to go back to the Agency of Original Jurisdiction for review to include the aforementioned vocational records, if any exist. In lieu of remand, please have those records sent to the Board of Veterans' Appeals for association with the case file.

The Disabled American Veterans is somewhat perplexed by the adversarial position taken, up to this point, by the Department of Veterans' Affairs, in spite of the legal precepts held in Public Law (PL) 100-687. The Agency of Original Jurisdiction has taken it upon itself to deny the claimant due process in spite of the precepts of Public Law (PL) 100-687 which notes that "VA is to adjudicate claims in a manner sympathetic to veterans. Congress has designed and fully intends to maintain a beneficial non-adversarial system of veterans' benefits.

Further, PL 100-687 notes, "Implicit in such a beneficial system has been an evaluation of a completely ex-parte system of adjudication in which Congress expects VA to fully and sympathetically develop the veteran's claim to its optimum before deciding on the merits. Even then, VA is expected to resolve all issues by giving the claimant the benefit of any reasonable doubt. In such a beneficial structure there is no room for such

adversarial concepts as cross examination, best evidence rule, hearsay evidence exclusion, or strict adherence to burden of proof.”

The Disabled American Veterans believes the record to fully support the veteran’s claim for an earlier effective date for the assignment of a 100 percent rating, or, at the very least, IU. Thus, the Disabled American Veterans continues on record to support the veteran’s claim for benefits cited above. The Disabled American Veterans requests that the Board resolve all doubt in favor of the veteran regarding all Board certified issues.

Although it is VA’s duty to ensure that its decision is based on consideration of all evidence and material of record and all applicable provisions of law, regulations, and other legal authorities, although it is VA’s duty to render a decision that grants every benefit that can be supported in law, and although appellant has no prior notice of the points upon which the Board will dispose of this appeal, the courts have held that appellants must raise all points here to preserve them for appeal. *E.g., Ledford v. West*, 136 F.3d 776 (1998).

The Secretary’s General Counsel relies on this holding to preclude veterans from arguing points to the Court that were not argued here. Notwithstanding that the Board is bound by this holding, however erroneous, appellant must raise the point herein to preserve the right to argue that it should be overruled by the courts.

Accordingly, appellant submits that the courts have erred in imposing this requirement upon VA claimants because it is contrary to the law as enacted by Congress and because it unreasonably requires appellants to foresee and argue preemptively all errors the Board might commit in its future decision.

In the alternative, appellant hereby notes exception to and preserves for appeal any error the Board may hereinafter make in disposing of this appeal. This includes, but is not limited to, all errors in law, whether by commission or omission; and all errors in fact; any failure to discharge the duty to assist; errors regarding well-groundedness; and insufficiencies in the reasons or bases for the decision.

Conclusion

Accordingly, this instant appeal is submitted this case to the Board for a fair and equitable decision. This service looks forward to a decision representing sound rating and medical principles, consistent with the Department’s policy of liberal interpretation and application of governing laws and regulations.

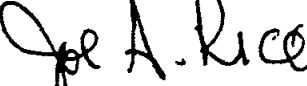
This instant appeal is submitted to the Board of Veterans’ Appeals for appellate review and favorable action with the final request that the board apply the provisions of 38 U.S.C.A. § § 1110, 1111, and 5107(b) in accordance with controlling law. The Board’s

Ranher, Allison i

29 708 311

effort to resolve the issue of this case in a timely, yet judicious, manner is respectfully appreciated.

Signed by
Joe A. Rice for the D.A.V.


National Appeals Officer
Board of Veterans' Appeals



ADDENDUM

34



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

IN THE APPEAL OF
ALLISON E. RANCHER

C 29 708 311

DOCKET NO. 99-22 607

)
)
)

DATE **MAY 22 2001**

On appeal from the
Department of Veterans Affairs (VA) Regional Office (RO)
in Montgomery, Alabama

THE ISSUE

Entitlement to an effective date prior to May 10, 1999, for the award of a 100 percent schedular evaluation for service-connected schizophrenia.

REPRESENTATION

Appellant represented by: Disabled American Veterans

ATTORNEY FOR THE BOARD

David A. Brenningmeyer, Counsel

INTRODUCTION

The veteran reportedly served on active duty from September 1980 to February 1984. This matter comes to the Board of Veterans' Appeals (Board) on appeal from an August 1999 decision by the RO in Montgomery, Alabama.

By a decision entered in April 1996, VA denied a claim for a total disability rating based on individual unemployability due to service-connected disability (TDIU). *See* 38 C.F.R. § 4.16 (2000). The veteran appealed that decision to the Board, and the Board remanded the claim to the RO for additional development in February 1999. In August 1999, while the claim was in remand status, the RO granted a total (100 percent) schedular rating for service-connected schizophrenia, effective from May 10, 1999. Thereafter, in June 2000, the veteran withdrew the TDIU claim from appeal. *See* 38 C.F.R. § 20.204 (2000). Consequently, that claim is no longer before the Board.

In September 1998, the veteran's representative contacted the RO and indicated that the veteran wanted to reopen a claim for service connection for post-traumatic stress disorder. The RO has not yet taken adjudicatory action on the claim to reopen, and it is unclear from the current record whether the veteran still wishes to pursue the claim. The matter is therefore referred to the RO for clarification and further action, as appropriate.

FINDINGS OF FACT

1. By a decision entered in July 1985, the RO allowed a formal claim for compensation for schizophrenia, and assigned a 30 percent schedular rating.

2. By a decision entered in March 1993, the RO increased the veteran's rating for paranoid schizophrenia to 50 percent, effective from January 11, 1993. She was notified of the RO's decision, and of her appellate rights, but she did not initiate an appeal within one year.
3. An informal claim for increased compensation for schizophrenia was received on July 12, 1995.
4. Prior to December 11, 1996, the record does not establish that schizophrenia was productive of more than considerable occupational and social impairment.
5. Prior to December 11, 1996, the record does not establish that schizophrenia was productive of more than reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment or abstract thinking; disturbances of motivation and mood; and difficulty in establishing and maintaining effective work and social relationships.
6. The veteran's service-connected schizophrenia has been productive of total social and industrial inadaptability since December 11, 1996.

CONCLUSION OF LAW

The criteria for an award of a 100 percent schedular evaluation for schizophrenia from December 11, 1996 are met. 38 U.S.C.A. §§ 1155, 5110, 7105 (West 1991 & Supp. 2000); Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, 114

Stat. 2096 (2000); 38 C.F.R. §§ 3.155, 3.157, 3.400, 4.1, 4.130 (Diagnostic Code 9203) (2000); 38 C.F.R. § 4.132 (Diagnostic Code 9203) (1996); 38 C.F.R. §§ 20.200, 20.201, 20.302, 20.1103 (1992).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

The veteran maintains that an effective date prior to May 10, 1999, should be established for the award of a 100 percent schedular evaluation for service-connected schizophrenia. In her notice of disagreement and substantive appeal, she has advanced argument to the effect that the award should be made retroactive to July 1995.

The general rule with respect to the effective date for an award of increased compensation is that the effective date of such an award "shall not be earlier than the date of receipt of application therefor." 38 U.S.C.A. § 5110(a) (West 1991). See 38 C.F.R. § 3.400(o)(1) (2000) (to the same effect). An exception to that rule applies under circumstances where evidence demonstrates a factually ascertainable increase in disability during the one-year period preceding the date of receipt of a claim for increased compensation. In that situation, the law provides that the effective date of the award "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.A. § 5110(b)(2) (West 1991). See 38 C.F.R. § 3.400(o)(2) (2000); *Harper v. Brown*, 10 Vet. App. 125 (1997). In all other cases, the effective date will be the "date of receipt of claim or date entitlement arose, whichever is later." 38 C.F.R. § 3.400(o)(1) (2000). See VAOPGCPREC 12-98 (Sept. 23, 1998).

Thus, in fixing an effective date for an award of increased compensation, VA must make two essential determinations. It must determine (1) when a claim for increased compensation was received, and (2) when a factually ascertainable increase in disability occurred.

With respect to the first determination, the Board notes that once a formal claim for compensation has been allowed, receipt of a VA report relating to the examination or treatment of a disability for which service connection has previously been established will be accepted as an informal claim for increased benefits. *See* 38 C.F.R. §§ 3.155, 3.157 (2000). Further, in such a situation, the date of the examination or treatment will be accepted as the date of receipt of the informal claim. *See* 38 C.F.R. § 3.157(b)(1) (2000).

VA must look to all communications from a claimant that may be interpreted as applications or claims - formal and informal - for benefits and is required to identify and act on informal claims for benefits. *Servello v. Derwinski*, 3 Vet. App. 196, 198 (1992). If VA fails to forward an application form to the claimant after receipt of an informal claim, then the date of the informal claim must be accepted as the date of claim for purposes of determining an effective date. *Servello*, 3 Vet. App. at 200.

With respect to the second determination, the Board notes that disability evaluations are determined by the application of a schedule of ratings, which is in turn based on the average impairment of earning capacity caused by a given disability. 38 U.S.C.A. § 1155 (West 1991); 38 C.F.R. § 4.1 (2000). Paranoid schizophrenia is evaluated in accordance with the criteria set forth in 38 C.F.R. part 4, Diagnostic Code 9203.

In the present case, the record shows that the RO increased the veteran's rating for schizophrenia by a decision entered in March 1993. She was notified of the RO's decision, and of her appellate rights, but she did not initiate an appeal within one year. *See* 38 U.S.C.A. § 7105 (West 1991); 38 C.F.R. §§ 20.200, 20.201, 20.302(a) (1992). As a result, that decision became final. *See* 38 C.F.R. §§ 20.1103 (1992). Consequently, and because the record shows that the RO previously allowed a formal claim for compensation for schizophrenia in July 1985, any VA examination report dated subsequent to the March 1993 decision, and pertaining to schizophrenia, must be considered an informal claim for increased benefits.

In this regard, the Board notes that the record contains a VA outpatient examination report pertaining to "schizoaffective disorder," dated July 12, 1995. This report is the earliest post-March 1993 document of record that can properly be construed as a claim for increased benefits. (Although the record contains earlier VA medical reports, dated on October 14, 1993, and October 11, 1994, which refer to the veteran's request for vocational rehabilitation, and to "mood swings," it is not clear from the face of those reports that they relate to "examination or treatment" of the veteran's schizophrenia, so as to satisfy the requirements for an informal claim under 38 C.F.R. § 3.157(b)(1).) Accordingly, it is the Board's conclusion that, for purposes of addressing the earlier effective date question here at issue, July 12, 1995, must be accepted as the date of receipt of an informal claim. Since there is no record that VA forwarded an application form to the claimant after receipt of the informal claim, then the date of the informal claim must be accepted as the date of claim for purposes of determining an effective date. *See Servello, 3 Vet. App. at 200.*

Turning to the question of when a factually ascertainable increase in disability occurred, the Board notes that the criteria for rating schizophrenia were amended effective November 7, 1996, while the July 12, 1995, claim was pending. *See Schedule for Rating Disabilities; Mental Disorders, 61 Fed. Reg. 52,695 (1996).* Prior to November 7, 1996, a total (100 percent) evaluation was warranted if the condition was characterized by active psychotic manifestations of such extent, severity, depth, persistence, or bizarreness as to produce total social and industrial inadaptability. With lesser symptomatology such as to produce severe impairment of social and industrial adaptability, a 70 percent rating is assigned. The *Rating Schedule* provided a 50 percent disability rating when there is evidence of considerable impairment both industrially and socially. *See 38 C.F.R. § 4.132, Diagnostic Code 9203 (1995).*

Effective November 7, 1996, 38 C.F.R. § 4.130, a 50 percent evaluation is warranted for occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory or stereotyped speech; panic attacks more than once a week;

difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment or abstract thinking; disturbances of motivation and mood; and difficulty in establishing and maintaining effective work and social relationships. A 70 percent evaluation is warranted where there is occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking or mood; suicidal ideation; obsessional rituals which interfere with routine activities; intermittently illogical, obscure, or irrelevant speech; 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; inability to establish and maintain effective relationships. A 100 percent evaluation is warranted where there is evidence of total occupational and social impairment due to 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; disorientation to time or place; memory loss for names of close relatives, own occupation or own name. 38 C.F.R. § 4.130, Diagnostic Code 9203 (2000) (hereinafter the new criteria).

In *Karnas v. Derwinski*, 1 Vet. App. 308 (1991), the United States Court of Appeals for Veterans Claims (known as the United States Court of Veterans Appeals prior to March 1, 1999) (Court) noted that when the law controlling an issue changes after a claim has been filed or reopened but before the administrative or judicial appeal process has been concluded, "the question arises as to which law now governs." *Id.* at 311. In that regard, the Court held that:

[W]here the law or regulation changes after a claim has been filed or reopened but before the administrative or judicial appeal process has been concluded, the version most favorable to [the] appellant . . . will apply unless Congress

provided otherwise or permitted the Secretary of [VA]
(Secretary) to do otherwise and the Secretary did so.

Id. at 313.

The revised law pertaining to the evaluation of mental disorders does not allow for retroactive application prior to November 7, 1996. When the new regulations were promulgated, the Secretary specifically indicated that November 7, 1996, was to be the effective date for the revisions. *See* Schedule for Rating Disabilities; Mental Disorders, 61 Fed. Reg. at 52,695 (1996). Consequently, because it is clear from the amended regulations that they are not to be accorded retroactive effect, the law prevents the application, prior to November 7, 1996, of the liberalizing law rule stated in *Karnas*.

As for the new rating criteria, the effective date of the award can be no earlier than the effective date of the new revisions. *See* 38 U.S.C.A. § 5110(g) (West 1991) (“where compensation . . . is . . . increased pursuant to any Act or administrative issue, the effective date of such award or increase . . . shall not be earlier than the effective date of the Act or administrative issue.”). *See also* VAOPGCPREC 3-2000 (April 10, 2000).

Applying the foregoing principles to the facts of the present case, the Board finds that an increase in the severity of the veteran’s schizophrenia was first demonstrated on December 11, 1996. On that date, she underwent a VA psychiatric examination for purposes of assessing the severity of her disorder. It was noted that she was somewhat anxious, tense, nervous, and mildly dysphoric. It was also noted that she was having auditory hallucinations, that she had some paranoid ideas, that she was hyper-vigilant, and that her memory and concentration were somewhat poor. Based on psychiatric findings alone, the examiner concluded that “[i]t is very unlikely that [the veteran] will be able to go back to a job where she will be gainfully employed.” In the Board’s view, this evidence is sufficient to establish the presence of active psychotic manifestations of such extent, severity, and depth so as to produce total

social and industrial inadaptability and warrant a total schedular evaluation under the old criteria.

The Board finds, however, that entitlement to schedular evaluation greater than 50 percent is not demonstrated prior to December 11, 1996, whether under the old or the new criteria. Although the record contains medical reports which indicate that the veteran suffered from significant psychiatric symptoms prior to December 11, 1996, and was unable to work, the record does not establish that schizophrenia was productive of more than considerable occupational and social impairment, prior to that date. Furthermore, the evidence does not reflect more than reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment or abstract thinking; disturbances of motivation and mood; and difficulty in establishing and maintaining effective work and social relationships, prior to December 11, 1996. As discussed below, the evidence did not contain reference to specific symptomatology (attributable to service-connected disability) meeting the criteria for a higher rating before December 11, 1996. Consideration of factors wholly outside the rating criteria would constitute error as a matter of law. *Massey v. Brown*, 7 Vet.App. 204, 207-08. It must be kept in mind that the use of manifestations not resulting from the disability in establishing the evaluation for this disorder is to be avoided. 38 C.F.R. § 4.14 (2000).

When the veteran was examined for Social Security purposes in December 1994, for instance, she complained of paranoia and problems with comprehension. She also reported auditory hallucinations. Clinically, she exhibited anxiety and poor concentration on testing. However, she was well-oriented, her conversation and thought processes were appropriate, there were no loose associations or confusion, and her mood and affect were appropriate. The examiner concluded that the veteran was suffering from chronic paranoid schizophrenia with acute exacerbations, and noted that she seemed in good remission, likely as a result of appropriate medications. The examiner concluded the veteran's activities seemed to be *mildly*

to moderately restricted and her interests appeared *mildly* constricted. With regard to employability, the examiner opined that the veteran's psychiatric history and paranoia would likely interfere with her ability to remain gainfully employed, but that "[s]he appears capable of some form of employment"

When the veteran's condition was assessed for Social Security purposes in January 1995, it was noted that she suffered from delusions and oftentimes had deficiencies of concentration, persistence, or pace, resulting in failure to complete tasks in a timely manner. On the other hand, it was also noted that her disability was not manifested by catatonic or other grossly disorganized behavior, by incoherence, loosening of associations, illogical thinking, or poverty of content with a blunt, flat, or inappropriate affect, or by emotional withdrawal and/or isolation. Her degree of limitation, in terms of restriction of activities of daily living and maintaining social functioning, was noted to be "marked," but not "extreme."

When the veteran was seen at VA on July 12, 1995, it was noted that she had a history of unprovoked crying spells, that she was depressed and isolated herself, and that she was "unable to compete for or maintain gainful employment." It was also noted in the report, however, that she suffered from diabetes "not in good control." Consequently, it appears that the conclusions in the report pertaining to her impairment for work may have been based, at least in part, on disability occasioned by a non-service-connected disorder. The detail contained in the report was not sufficient to establish a measurable increase in the severity of the service-connected disability.

When the veteran was seen at VA on September 18, 1995, it was noted that she had a history of paranoid schizophrenia. However, the emphasis of the visit was treatment of her back pain, and the only thing noted about her mental status was that she was oriented and had a restricted social life.

When the veteran was seen by a VA counseling psychologist on July 27, 1995, and May 29, 1996, it was again noted that she was unemployable. However, as with the earlier report of July 12, 1995, the examiner noted that the veteran suffered from

problems other than schizophrenia, such as chronic pain in her knees and back, blurred vision, dizziness, and diabetes. Thus, 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.

When the veteran was seen at VA on August 15, 1995, it was noted that she was depressed, and that she spent a lot of time in bed. It was also noted, however, that "[s]ome of her depression may be related to her uncontrolled diabetes."

When the veteran was examined for VA purposes in October 1995, it was noted that she had "mixed episodes" of schizoaffective disorder, that she suffered from fearfulness, auditory hallucinations, and "manic attacks," and that she had tried on many occasions to work and could not function. However, it was also noted in report of the examination that she had a history of knee problems, diabetes, and hepatitis. In addition, it was further noted, with respect to objective psychiatric findings, that she was animated, that her mood was not depressed, that she had good eye contact, that she was alert and cooperative, that her memory was well-preserved, that she was fairly intelligent, and that her insight and judgment were "pretty good." The report, at best, provides a mixed picture of the extent to which service-connected psychiatric symptomatology alone impaired the veteran for work.

In July 1996, a VA examiner noted that the veteran was marginally functional, but not delusional. The examiner noted that the veteran was unemployable, but did not provide any discussion or explanation for that conclusion.

When the veteran was seen at VA in November 1996, she reported that she had been subjected to sexual harassment while in the military. In terms of her psychiatric symptoms, it was noted only that she was angry, depressed, and not sleeping well, and that she had relationships that ended poorly. However, the overall scope and relative severity of her symptoms was not discussed in any significant detail.

When the veteran was seen at VA on December 4, 1996, she reported feeling more stressed. She also complained of sleepwalking and loneliness, and said that she was hearing more voices. Objectively, however, it was noted that she appeared less stressed than previously, and that she was showing less depression.

Based on a review of these records, together with the other evidence of record, the Board finds that the evidence supports a finding of an ascertainable increase in disability as of December 11, 1996, but no earlier, under the applicable criteria. Accordingly, and because the date of ascertainable increase post-dates the date of July 1995 claim, the proper effective date to be assigned for the award of a 100 percent schedular rating for schizophrenia is December 11, 1996. To this extent, the appeal is granted.

On November 9, 2000, while the veteran's appeal was pending, the President signed into law the Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, 114 Stat. 2096 (2000). The new law applies to all claims filed on or after the date of the law's enactment, as well as to claims filed before the date of the law's enactment, and not yet finally adjudicated as of that date. See Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, § 7, subpart (a), 114 Stat. 2096, 2099-2100 (2000); VAOPGCPREC 11-2000 (Nov. 27, 2000). The new law contains revised notice provisions, and additional requirements pertaining to VA's duty to assist. See Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, §§ 3-4, 114 Stat. 2096, 2096-2099 (2000) (to be codified as amended at 38 U.S.C. §§ 5102, 5103, 5103A, and 5107).

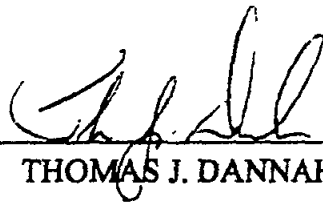
The RO has not yet considered the claim here in question in the context of the new law. Consequently, the Board must consider whether the veteran would be prejudiced by the Board's proceeding to a final adjudication of her claim, without first remanding it back to the RO for further action. See, e.g., *Bernard v. Brown*, 4 Vet. App. 384 (1993); VAOPGCPREC 16-92 (July 24, 1992).

Under the particular circumstances here presented, the Board finds that a remand is not required. By virtue of a statement of the case furnished the veteran in October

1999, she has been notified of the information and evidence necessary to substantiate her claim. Moreover, it appears that the evidence necessary to the adjudication of the claim has been procured for review. Consequently, inasmuch as VA has already provided notice and assistance in this case, a remand would serve no useful purpose. *See Soyini v. Derwinski*, 1 Vet. App. 540, 546 (1991) (strict adherence to requirements in the law does not dictate an unquestioning, blind adherence in the face of overwhelming evidence in support of the result in a particular case; such adherence would result in unnecessarily imposing additional burdens on VA with no benefit flowing to the veteran); *Sabonis v. Brown*, 6 Vet. App. 426, 430 (1994) (remands which would only result in unnecessarily imposing additional burdens on VA with no benefit flowing to the veteran are to be avoided). Adjudication of the this claim, without referral to the RO for initial consideration under the new law, poses no risk of prejudice to the veteran.

ORDER

An effective date of December 11, 1996, is assigned for the award of a total schedular evaluation for schizophrenia; to this extent, the appeal is allowed, subject to the regulations governing the award of monetary benefits.



THOMAS J. DANNAHER
Member, Board of Veterans' Appeals



ADDENDUM

35

(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

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



ADDENDUM

36

appropriate effective date where it was not clearly erroneous). In addition, the Board's thorough discussion of the relevant evidence, discussed *supra*, afforded an adequate statement of its reasons and bases. Therefore, the Court should find Appellant's arguments unpersuasive and affirm the Board's decision.

V. APPELLANT'S OTHER CONTENTIONS

A. The Court should reject Appellant's assertion that her initial February 1985 claim is not final

Appellant asserts that the Board decision is clearly erroneous because, the argument follows, her initial February 1985 claim is not final due to the VA's failure to consider, following issuance of the July 1985 rating decision, the July 1986 VA vocational rehabilitation report. App. Br. at 8; see (R. at 165). The Court should reject Appellant's attempt to mischaracterize his efforts to contest the July 1985, rating decision for the first time before this Court by cloaking it in the guise of an attack on the Board's May 22, 2001, decision.

Her argument become untenable when viewed alongside the evidence of record. The validity of her contention requires that the Court disregard the fact that subsequent to the allegedly unconsidered July 1986 VA vocational rehabilitation note, two final agency decisions were issued in October 1991 and March 1993. (R. at 248-50, 306-07). Assuming *arguendo* that the issue of the severity of Appellant's service-connected schizophrenia remained open following the July 1985 rating decision, that issue became final following the unappealed October 1991 rating decision. In addition, following issuance of the of the unappealed March 1993 rating decision that raised Appellant's disability rating for service-connected schizophrenia to 50-percent, the issue again became final (See R. at 3) until the most recent claim for increase which the Board determined was presented with the July 12, 1995 examination. (R. at 6).

Appellant's reasoning that this vocational rehabilitation note somehow serves to now resurrect the July 1985 rating decision is flawed. In pursuing what

ADDENDUM

37

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 02-1142

ALLISON E. RANCHER, APPELLANT,

v.

R. JAMES NICHOLSON,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before LANCE, *Judge*.

ORDER

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

The appellant, through counsel, appeals a May 22, 2001, Board of Veterans' Appeals (Board) decision that denied an effective date prior to December 11, 1996, for the award of a 100% schedular evaluation for service-connected schizophrenia. Record (R.) at 1-14. This appeal is timely, and the Court has jurisdiction 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 reasons that follow, the Court will affirm the May 22, 2001, decision.

The appellant had active service from September 1980 to February 1984. R. at 2. A July 1985 VA regional office (RO) decision awarded service connection for paranoid schizophrenia and a 30% disability rating effective April 1985. R. at 142-43. After two prior claims for an increased rating were denied (R. at 248-50, 279), a March 1993 RO decision increased the appellant's evaluation to 50% disabled, effective January 1993 (R. at 306-07). That decision was not appealed. In July 1995, the appellant submitted another claim for an increased rating. R. at 327-28. After a lengthy procedural history, the May 22, 2001, Board decision on appeal awarded a 100% disability rating, effective December 11, 1996. R. at 1-14. The effective date for this award was based upon the findings that the increase was based upon a July 12, 1995, informal claim and that it was not factually ascertainable that her disability had increased prior to a December 11, 1996, VA psychiatric examination. R. at 3.

Section 5110(a) of title 38, U.S. Code, governs the assignment of an effective date for an award of benefits:

[T]he effective date of an award based on an original claim, a claim reopened after final adjudication, or a claim for increase, of compensation, dependency and indemnity compensation, or pension, 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). The implementing regulation similarly states that the effective date shall be the date of receipt of claim or date entitlement arose, whichever is later, unless claim is received within one year after separation from service. See 38 C.F.R. § 3.400 (2004). An exception to this general rule occurs in a claim for increased compensation. 38 C.F.R. § 3.400(o)(1). An effective date for such a claim may date back to one year before the date of the formal application for increase if it is "factually ascertainable that an increase in disability had occurred" within that time frame. See 38 U.S.C. § 5110(b)(2); see also *Harper v. Brown*, 10 Vet.App. 125, 126 (1997); 38 C.F.R. § 3.400(o)(2). A Board determination of the proper effective date is a finding of fact that the Court reviews under the "clearly erroneous" standard set forth in 38 U.S.C. § 7261(a)(4). See *Evans v. West*, 12 Vet.App. 396, 401 (1999); *Hanson v. Brown*, 9 Vet.App. 29, 32 (1996).

On appeal the appellant first asserts that the Board erred in identifying July 12, 1995, as the date of the relevant claim under 38 U.S.C. § 5110 because the original 1985 RO decision is not final. Brief (Br.) at 8-14. Specifically, she asserts that she submitted new evidence in July 1986—within one year of the decision—and that, under 38 C.F.R. § 3.156(b) (2005), such evidence "will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period." This argument is without merit. Even assuming that the submission of new evidence tolled her time to appeal the 1985 decision, that evidence was weighed and found insufficient as part of an October 1991 RO decision that denied an increased rating. The appellant failed to appeal this decision and, therefore, it became final. See *Myers v. Principi*, 16 Vet.App. 228, 236 (2002). Accordingly, because the appellant received a decision weighing the evidence submitted in 1986 and had the opportunity to appeal any disagreement with how it was evaluated, no claim with respect to that evidence was pending in 1995.

Second, the appellant argues that the Board's statement of reasons or bases is inadequate to support its finding that it was not factually ascertainable prior to the December 11, 1996, VA psychiatric examination that she met the requirements for a 100% rating. Br. at 14-19. The Board is required to include in its decision a written statement of the reasons or bases for its findings and conclusions on all material issues of fact and law presented on the record; that statement must be adequate to enable an appellant to understand the precise basis for the Board's decision, as well as to facilitate informed review in this Court. See 38 U.S.C. 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995); *Gilbert v. Derwinski*, 1 Vet.App. 49, 56-57 (1990). To comply with this requirement, the Board must analyze the credibility and probative value of the evidence, account for the evidence that it finds persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant. See *Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff'd*, 78 F.3d 604 (Fed. Cir. 1996) (table); *Gabrielson v. Brown*, 7 Vet.App. 36, 39-40 (1994); *Gilbert, supra*.

To the extent that the appellant asserts that the Board "ignor[ed]" a portion of Dr. Charles Houston, Sr.'s December 1994 opinion, the record does not support this assertion because the Board specifically acknowledged the disputed portion when it noted that the opinion stated that her schizophrenia "would likely interfere with her ability to remain gainfully employed." R. at 10. The Board adequately explained that this opinion did not support a 100% disability rating because the doctor went on to state that the appellant "appears capable of some form of employment." R. at 10. To the extent that the appellant asserts that the Board did not give adequate reasons for rejecting the July 1995 reports of Dr. Thomas McNutt and registered nurse Katharyn Dowdle, the Board clearly stated that these opinions were of limited value because they failed to distinguish between the appellant's schizophrenia and her non-service-connected conditions in describing her limitations. R. at 10. While the appellant's brief makes clear that she would have weighed this evidence differently, this disagreement does not mean that the Board failed to make the reasons or bases for its decision clear. Because the Court has no trouble understanding the Board's reasoning, it concludes that the statement of reasons or bases was adequate as to this evidence. *See Allday and Gilbert, supra.*

The appellant also points to numerous documents that predate the January 1993 decision that increased her disability rating to 50% that were not discussed by the Board. However, the Court finds no error in the Board's failure to discuss these documents as they had already been weighed by the prior decisions adjudicating her previous claims for an increased rating. The Board is required to discuss only the evidence and issues necessary for a fair adjudication. *See Dela Cruz v. Principi*, 15 Vet.App. 143, 149 (2001). In an increased rating claim, the relevant issue is the appellant's current level of disability. *See Proscelle v. Derwinski*, 2 Vet.App. 629, 632 (1992). Hence, the Board was justified in focusing on the evidence submitted since the last final decision as to the appellant's rating. This is not to say that older evidence is irrelevant. Evidence submitted in support of prior claims may be relevant to resolving any ambiguity as to how to interpret the evidence gathered in conjunction with the present claim for an increase. *Cf.* 38 C.F.R. § 4.41 (2005); *Green v. Derwinski*, 1 Vet.App. 121, 124 (1991) ("[T]horough and contemporaneous medical examination" is one that "takes into account the records of the prior medical treatment, so that the evaluation of the claimed disability will be a fully informed one."). However, the appellant does not argue that a discussion of this previously considered evidence was necessary to explain how the new evidence was evaluated. Rather, she asserts that the evidence supports her contention that she was 100% disabled as of February 2, 1985. Such an effective date could only be awarded based on a collateral attack on the prior final rating decisions and no such attack was before the Board in the decision on appeal. Hence, the appellant has not demonstrated that it was error for the Board not to reconsider this evidence. *See Berger v. Brown*, 10 Vet.App. 166, 169 (1997) (stating that "the appellant . . . always bears the burden of persuasion on appeals to this Court").

Third, the appellant argues that her claim should be remanded because she did not receive adequate notice of how to substantiate her claim pursuant to the Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, 114 Stat. 2096. Br. at 19-22. Upon receipt of a complete or substantially complete application for benefits, the Secretary is required to inform the claimant of the information and evidence not of record (1) that is necessary to substantiate the claim, (2) that the Secretary will

seek to obtain, if any, and (3) that the claimant is expected to provide, if any. See 38 U.S.C. § 5103(a); *Quartuccio v. Principi*, 16 Vet.App. 183, 187 (2002); 38 C.F.R. § 3.159(b) (2005). The Secretary is also required to "request that the claimant provide any evidence in the claimant's possession that pertains to the claim." 38 C.F.R. § 3.159(b)(1); see *Pelegriani v. Principi*, 18 Vet.App. 112, 121 (2004). However, this Court recently held that "the statutory scheme contemplates that once a decision awarding service connection, a disability rating, and an effective date has been made, section 5103(a) notice has served its purpose, and its application is no longer required because the claim has already been substantiated." *Dingess v. Nicholson*, 19 Vet.App. 473, 490 (2006). In this case, the appellant's claim for a 100% disability rating was granted and assigned an effective date in an August 1999 RO decision. R. at 1037. Accordingly, it was already substantiated at the time section 5103(a) was enacted, and the Secretary had no obligation to provide notice under the statute. *Dingess*, 19 Vet.App. at 493.

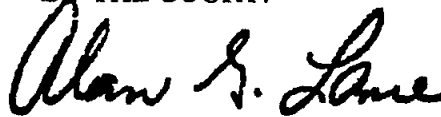
Finally, to the extent that the appellant asserts that the Board failed to ensure compliance with the terms of a February 26, 1999, Board remand decision, see *Stegall v. West*, 11 Vet.App. 268, 271 (1998) ("[A] remand by this Court or the Board imposes upon the [Secretary] a concomitant duty to ensure compliance with the terms of the remand."), that Board decision concerned a request for a total disability rating based on individual unemployability (TDIU). The Board decision on appeal explicitly found that the appellant withdrew her request for TDIU in June 2000 (R. at 2), and the appellant does not challenge that finding. Hence, no further consideration of that issue by the Board was required. See *Hamilton v. Brown*, 4 Vet.App. 528, 544 (1993) ("[W]here, as here, the claimant expressly indicates an intent that adjudication of certain specific claims not proceed at a certain point in time, neither the RO nor [the Board] has authority to adjudicate those specific claims, absent a subsequent request or authorization from the claimant or his or her representative.").

Upon consideration of the foregoing, it is

ORDERED that the May 22, 2001, Board decision is AFFIRMED.

DATED: SEP 13 2006

BY THE COURT:



ALAN G. LANCE, SR.
Judge

Copies to:

John F. Cameron, Esq.

VA General Counsel (027)

ADDENDUM

38

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

| | | |
|--------------------------------|---|-----------------------|
| ALLISON E. RANCHER, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Vet. App. No. 02-1142 |
| |) | |
| R. JAMES NICHOLSON, |) | |
| Secretary of Veterans Affairs, |) | |
| |) | |
| Appellee. |) | |

**APPELLANT'S MOTION FOR RECONSIDERATION/
PANEL REVIEW OF COURT'S SEPTEMBER 13, 2006 ORDER**

Pursuant to U.S. Vet. App. Rules 35(a) and (b), the Appellant, Allison E. Rancher, files this motion for reconsideration of this Court's September 13, 2006 Order which affirmed the May 22, 2001 Board of Veterans' Appeals (hereinafter, "Board") decision. Alternatively, the Appellant moves the Court for panel review of the Court's decision.

It is respectfully submitted that in its September 13, 2006 decision, this Court erred by improperly accepting the Board's legally erroneous interpretations of the statutory and regulatory provisions pertaining to Ms. Rancher's ability to prove her entitlement to an earlier effective date for her total rating for her service-connected benefits and by ignoring the Appellant's evidence in the record.

ARGUMENT

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

The Court “assume[ed] that the submission of [Ms. Rancher’s] new evidence tolled her time to appeal the [August 1,] 1985 decision.” (Court’s decision, p. 2). There is no question that the submission of the July 17, 1986 VA Vocational Rehabilitation Report during the one-year appeal period following the August 1985 VARO Rating decision tolled the one-year appeal period. In *Muehl v. West*, 13 Vet. App. 159 (1999), the Court stated that under 38 C.F.R. § 3.156(b), “Here, the RO rendered an adverse decision in September 1993. Thus, if new and material evidence was presented or secured on behalf of the appellant before September 1994, it will be considered as having been filed in connection with his December 9, 1992, application to reopen his claim (the claim which was pending at the beginning of the appeal period).” *Id.* at 161. The Court in *Muehl* stated that the Board had “determined that [the appellant’s] claim filed in December 1992 and denied in September 1993 had become final because *he did not submit a timely NOD.*” (emphasis supplied) *Id.* at 161. Nonetheless, the Court held, “[b]ecause the SSA

records were received within the appeal period, the Court holds that the September 1993 RO decision was *not a final decision.*" (emphasis supplied) *Id.* at 161.

This Court stated "that [Ms. Rancher's new] evidence was weighed and found insufficient as part of an October 1991 RO decision that denied an increased rating. The appellant failed to appeal this decision and, therefore, it became final ... Accordingly, because the appellant received a decision weighing the evidence submitted in 1986 and had the opportunity to appeal any disagreement with how it was evaluated, no claim with respect to that evidence was pending in 1995." (Court's decision, p. 2).

It is respectfully submitted that this conclusion by the Court is based on its incorrect factual conclusion that the July 1986 VA Report was "weighed" by the October 1991 VARO decision and its erroneous legal interpretation of 38 U.S.C. §5104(b) (R. 248-50). In October 1991, the VARO was required to "include....a summary of the evidence considered by the Secretary." *See* 38 U.S.C. §5104(b). The October 1991 Rating decision did not refer to or include a summary of the July 1986 Vocational Rehabilitation report (R. 248). Given that the October 1991 Rating decision was required to "include... a summary of all evidence considered by the Secretary" and the Secretary did *not* include a summary of the July 1986 VA report, the only conclusion that can be drawn is that the Secretary did not consider or "weigh" the July 1986 VA report.

The Secretary has not disputed the Appellant's contention that "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." (Appellant's Brief, p. 8). The Secretary has not disputed the Appellant's contention that "[i]n 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." (Appellant's Brief p. 8).

It is respectfully submitted that the Court's conclusion is also based on its erroneous legal conclusion that Ms. Rancher "failed to appeal this [October 1991] decision and therefore, it became final." (Court's decision, p. 2). Ms. Rancher did appeal the October 30, 1991 VARO decision because she submitted new and material evidence of her October 28, 1992 treatment at the VAMC within the one-year appeal period (R. 252, 298-99). On November 4, 1992, the VA's psychologist opined that Ms. Rancher "is considered unemployable because of her s[ervice-]c[onnected] diagnosis of schizophrenia" (R.300-01). This new evidence submitted within the one-year appeal period was effective in tolling the appeal period. *See Muehl v. West, supra*. On October 16, 1992, within the one-year appeal period, she filed an application for total disability benefits based on unemployability due to her service-connected schizophrenia (R. 266-67). This application reflected her disagreement with the existing rating for her service-connected schizophrenia and

her desire to contest the result. A Notice of Disagreement (NOD) is "[a] written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the [RO] and a desire to contest the result." 38 C.F.R. § 20.201 (1992); *see also Hamilton v. Brown*, 4 Vet. App. 528, 531 (1993).

It is respectfully submitted that the Court's conclusion that since Ms. Rancher "received a decision weighing the evidence submitted in 1986 and had the opportunity to appeal any disagreement. . . ., no claim with respect to the evidence was pending in 1995" is based on the Court's erroneous legal interpretation that a later denial or Rating decision to a second application is effective as a denial or Rating decision to a *prior, unadjudicated* application. The Court's decision provides no legal authority for its erroneous legal standard. On the contrary, this Court has consistently held that the later denial or Rating decision to a second application or claim is not effective as a denial or Rating decision to a prior, unadjudicated claim. *See e.g. Ruffin v. Principi* 16 Vet. App 12 (2002) (The Court held that an October 1982 VA denial letter of a subsequent claim "cannot stand as a denial of the 1969 lower back claim in compliance with the governing regulation."); *Myers v. Principi*, 16 Vet. App. 228 (2002) (in which the VA failed to issue a Statement of the Case in response to a Notice of Disagreement filed in 1959, and after several reopened claims were subsequently denied, the claimant filed a successful reopened claim

and the Court ruled that the veteran deserved an effective date in the 1950s because the failure of the VA to ever issue an SOC meant that the denial of the claim filed in the 1950s never became final). *Meeks v. West*, 12 Vet. App. 352 (1999); *Meeks v. Brown*, 5 Vet. App. 284 (1993). (The veteran initially received an effective date in 1985 for both service connection and a disability rating of 70 percent. The veteran's successful appeal on the effective date established 1970 as the effective date for service connection and created the possibility of a 1970 effective date for a disability rating up to 100 percent. The disability rating that should be assigned from 1970 through 1985 depends upon what the evidence shows the veteran's degree of disability was during those years. The 70 percent rating is not automatically retroactive to 1970.); *Perry v. West*, 12 Vet. App. 365, 368 (1999); *Isenbart v. Derwinski*, 3 Vet. App. 177 (1992) (the VA's failure to adjudicate an earlier claim for pension resulted in that claim remaining open despite the grant of the subsequent claim for pension, and the open claim was remanded for adjudication of whether pension should be awarded for a period prior to the effective date of the later award.).

The Board decision should be reversed and an effective date of February 2, 1984 for Ms. Rancher's total disability claim should be assigned by the Court. *See Muehl v. West, supra*; 38 U.S.C. § 5110(b)(1).

B. 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

This Court's decision does *not* consider the Board's improper failure to address the favorable evidence provided by the finding of the Commissioner of Social Security Administration (SSA) that Ms. Rancher was so disabled that she met Listing 12.03A and B of the Commissioner's Listing, 20 C.F.R. Listing 12.03. Appendix 1, from January 5, 1985, solely due to her service-connected schizophrenia (R. 1097). *See Timberlake v. Gober*, 14 Vet.App. 122 (2000).

"Although the SSA's decision regarding appellant's unemployability is not controlling for VA determinations, it is certainly 'pertinent' to the present claim. . . . This evidence is relevant to the determination of the appellant's ability to secure and follow a substantially gainful occupation under 38 C.F.R. § 4.16(c). This Court has noted that while there are significant differences in the definition of disability under the Social Security and VA systems (e.g., under Social Security, 42 U.S.C. § 423(d) (1988) and 20 C.F.R. § 404.1509 (1990), the disability need not be reasonably likely to last for the claimant's lifetime as is required for VA purposes under 38 U.S.C. § [1502(a)(1)] and 38 C.F.R. § 3.340(b)), there are also significant similarities (e.g., both statutes include within their respective definitions the terms

‘substantially’ and ‘gainful’ when describing the form of employment in which the claimant is unable to engage).” *Murincsak v. Derwinski*, 2 Vet. App. 363, 370 (1992).

Given that SSA’s finding of total disability was based *solely* on Ms. Rancher’s service-connected schizophrenia, this Court’s decision is based on its reliance on the Board’s legally erroneous standard that it could base its decision on some of the evidence in the record, but could ignore the SSA’s administrative finding of total disability.

A finding by the Commissioner of SSA that Ms. Rancher met the requirements of SSA’s Listing for schizophrenia at Listing 12.03, 20 C.F.R. Listing 12.03, Appendix 1, to subpart P, from January 1985, represents the Commissioner’s conclusion that she was totally disabled *solely* due to her service-connected schizophrenia because the schizophrenia “prevent[s] a person from pursuing any gainful work.” See *Zebley v. Sullivan*, 493 U.S. 521, 532-33 (1990), citing *Yuckert v. Bowen*, 482 U.S. 137, 141 (1987) (if an adult’s impairment “meets or equals one of the listed impairments, the claimant is conclusively presumed to be disabled. If the impairment is not one that is conclusively presumed to be disabling, the evaluation proceeds to the fourth step”); and *Campbell v. Heckler*, 461, 458, 460 (“The regulations recognize that certain impairments are so severe that they prevent a person from pursuing any gainful work.... A claimant who establishes that he suffers from one of these impairments will be considered

disabled without further inquiry... If a claimant suffers a less severe impairment, the Secretary must determine whether the claimant retains the ability to [work]”).

The Secretary has conceded that the Board failed to consider the SSA’s finding that Ms. Rancher met its Listing 12.03 based solely on her schizophrenia from January 1985. The Court’s decision does not address this issue.

The Board failed to discuss or state any reason or basis for Ms. Rancher’s testimony in September 1998 that she had been receiving Social Security Disability (SSD) benefits for approximately 14 years (R. 790). This was based on the Board’s misinterpretation of the legal standards of evidence for proving her claim. *See Buchanan v. Nicholson*, 2006 U.S. App. LEXIS 14527 (Fed.Cir. June 14, 2006). This Court has accepted the Board’s legally erroneous interpretation.

In this Court’s decision, it concluded that the Board “adequately explained that [Dr. Houston’s December 1994 opinion] did not support a 100% disability rating because the doctor went on to state that the appellant ‘appears capable of some form of employment.’” (emphasis supplied) (Court’s decision, p. 3). While Dr. Houston did state that “[s]he appears capable of some form of employment,” he also made it clear that “her psychiatric history and paranoia likely interferes with her ability to *remain gainfully employed*.” (emphasis supplied) (R. 1099). The Board summarized Dr. Houston’s report, but did not “explain[]” why it concluded that she was not totally disabled when she could not “remain gainfully employed.” The

relevant inquiry was whether Ms. Rancher's service-connected schizophrenia precluded her from following a "substantially gainful occupation," not "some form of employment." See 38 U.S.C. § 1502(a)(4) and 38 C.F.R. § 3.340(b). The Board's conclusion was based on its erroneous legal interpretations of this statute and regulation. The Court's decision accepts the Board's misinterpretations.

The Court's reliance on the Board's speculative statements that the July 1995 reports of psychologist Dr. Thomas McNutt and registered nurse practitioner Katharyn Dowdle were of "limited value because they failed to distinguish between the appellant's schizophrenia and her non-service-connected conditions in describing her limitations" is based on its legally erroneous view of the evidence (Court's decision, p. 3). As a VA psychologist, Dr. McNutt was not competent to testify about any non-psychological conditions. Ms. Dowdle's opinion was based on Ms. Rancher's schizophrenia. Without any contradictory professional opinions, the Board improperly rejected these medical opinions based on its own lay medical conclusions. See *Colvin v. Derwinski*, 1 Vet. App. 171, 175 (1991). The Court's decision has adopted and relied on the Board's erroneous legal standards.

The Court adopted the Board's legally erroneous standard that the Board was not required to discuss the previously considered medical records and evidence with regard to the open original claim (Court's decision, p.3). See *McGrath v. Gober*, 14 Vet. App. 18, 35 (2000).

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

It is respectfully submitted that the Court's decision adopted the Board's erroneous legal standards when the Court concluded, "The Board decision on appeal explicitly found that the appellant withdrew her request for TDIU in June 2000 (R. at 2), and the appellant does not challenge that finding. Hence, *no further consideration of that issue by the Board was required.*" (emphasis supplied) (Court's decision, p. 4).

While it is correct that the Board improperly concluded that the Appellant had withdrawn her TDIU claim, the Appellant did challenge this improper finding before the Board and this Court (R.1115) (Appellant's Brief, pp. 5-6; Reply Brief, p. 13). As the Appellant argued in her Brief, in January 2001, her service representative had corrected the mentally disabled Appellant's mistake by placing the TDIU claim in issue *before* the May 2001 Board decision (R. 1115). At the time of the Board's May 2001 decision, the Board was required to adjudicate the disputed TDIU issue because the representative had corrected the record and placed the claim in issue. *See Hamilton v. Brown*, 4 Vet. App. 528, 544 (1993).

In adjudicating whether Ms. Rancher had validly withdrawn her TDIU claim, the VA and Board were required, but failed, to read and construe all

communications from a *pro se* veteran in a sympathetic manner and grant all possible benefits. *See Moody v. Principi*, 360 F.3d 1306, 1310 (Fed. Cir. 2004) (The Court stated any “ambiguity” in the veteran’s earlier pleadings “should be resolved in favor of the veteran.”); *Roberson v. Principi*, 251 F.3d 1378, 1384 (Fed. Cir. 2001). The Board failed to read and construe Ms. Rancher’s *pro se* pleadings in a sympathetic manner and resolve any ambiguity in her favor. The Board merely concluded, “Thereafter, in June 2000, the veteran withdrew the TDIU claim from appeal. *See* 38 C.F.R. § 20.204 (2000). Consequently, that claim is no longer before the Board.” (R. 2). The Board ignored the representative’s written correction of this issue in January 2001 (R. 1115). The Board improperly interpreted its duty to make a decision based on all evidence and relevant law. *See* 38 U.S.C. § 7104(d). This Court accepted the Board’s legally erroneous interpretations.

Under the February 1999 Board remand order, the VARO was ordered to obtain all records, including the SSA records, before obtaining a new psychiatric Compensation & Pension examination report of Ms. Rancher (R.992-95). In May 2001, the Board failed to ensure compliance with its February 1999 Board remand order because it was obvious that the VARO obtained the new psychiatric examination *before* the SSA records were received, which had the effect of depriving Ms. Rancher of a full and fair examination based on a complete review of her long history of schizophrenia. *See Stegall v. West*, 11 Vet. App. 268, 271 (1998).

The Court's decision stated that "the appellant argues that her claim should be remanded because she did not receive *adequate notice* of how to substantiate her claim the Secretary had no obligation to provide *notice* under the statute." (emphasis supplied) (Court's decision, p. 4). It is respectfully submitted that this Court's decision concluding that the Appellant was not entitled to VCAA notice of any missing evidence and information for her claim was based on its erroneously legal interpretation that her claim "ha[d] already been substantiated." *Dingess v. Nicholson*, 19 Vet. App. 473, 490 (2006). The Appellant's claim has not been fully substantiated until the complete benefits are awarded. *Cf. AB v. Brown*, 6 Vet. App. 35, 38 (1993) ("Thus, on a claim for an original or an increased rating, the claimant will generally be presumed to be seeking the maximum benefit allowed by law and regulation, and it follows that such a claim remains in controversy where less than the maximum available benefit is awarded."). This Court's conclusion was contrary to the Board's prior favorable finding that the VCAA did apply to Ms. Rancher's claim; however, the Board improperly concluded that the VA had complied with the VCAA because "she had been notified of the information and evidence necessary to substantiate her claim" in an October 1999 Statement of the Case (R. 12-13, 1052-63). See *Mayfield v. Nicholson*, 444 F.3d 1328 (2006).

The Appellant also argued that the Secretary violated its duty to assist (Appellant's Brief, pp. 22-23; Reply Brief, 10-13). "Although a claimant may and

should assist in processing a claim, it is the Secretary who has the affirmative, statutory duty to assist the veteran in making his case.” *McLendon v. Nicholson*, 20 Vet. App. 79, 85 (2006). The Secretary was required by the VCAA to perform its duty to assist. *See* 38 U.S.C. § 5103A(a), (d). Even assuming *arguendo* that the VCAA did not explicitly apply to the Appellant’s claim, the Board’s February 1999 remand order which directed a new medical examination after the SSA records were obtained required the VARO to perform this examination as ordered, and the Board was required to ensure compliance with its remand order. *See Stegall v. West*, 11 Vet. App. 268, 271 (1998); *see also* 38 U.S.C. § 5103A(g) (“Nothing in this section shall be construed as precluding the Secretary from providing such other assistance under subsection (a) to a claimant in substantiating a claim as the Secretary considers appropriate.”).

CONCLUSION

Therefore, the Appellant respectfully moves the Court to reconsider its September 13, 2006 Order and to reverse and remand the Board’s May 2001 decision based upon the above discussion. Alternatively, the Appellant moves the Court to review the Court’s September 13, 2006 decision by panel review.

This 3rd day of October 2006.

Respectfully submitted,



John F. Cameron
Attorney for Appellant
Allison E. Rancher

P.O. Box 240666
Montgomery, AL 36124-0666
(334) 502-9500

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion for Reconsideration/Panel Review of Court's September 13, 2006 Order was placed in the U.S. mail, postage prepaid and properly addressed, on this the 2nd day of October 2006, to the following:

Michael J. Burdick, Esq.
Office of the General Counsel (027C)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420



John F. Cameron



ADDENDUM

39

JAN 11 2008

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

US COURT OF APPEAL
FOR VETERANS CLAIMS
JAN 11 2008
FILED

ALLISON E. RANCHER,

Appellant,

v.

JAMES B. PEAKE,
Secretary of Veterans Affairs,

Appellee.

**IN THE UNITED STATES
COURT OF APPEALS FOR
VETERANS CLAIMS
No. 02-1142**

Date of Judgment:
November 16, 2007


**APPELLANT'S NOTICE OF APPEAL TO THE U.S. COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

NOTICE IS HEREBY given that Appellant, Allison E. Rancher,
appeals to the above-named Court from the order of the United States
Court of Appeals for Veterans Claims (Veterans Court), entered in this
cause on November 16, 2007.

The Appellant seeks review and interpretation of 38 U.S.C. §§
7104(e), 7105 and 38 C.F.R. §§ 3.156, 20.204, which were relied on by
the Veterans Court in making its decision.

This the 8th day of January, 2008.

Respectfully submitted,



JOHN F. CAMERON
Attorney for Appellant
Allison E. Rancher

P.O. Box 240666
Montgomery, AL 36124-0666
(334) 502-9500

CERTIFICATE OF SERVICE

I hereby certify that I have mailed two copies of the foregoing Addendum to Brief of Claimant-Appellant, by U.S. mail, postage prepaid and properly addressed, on this the 23rd day of April 2008, addressed to the following:

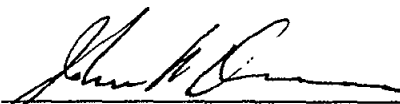
Sean B. McNamara, Esq.
Department of Justice
1100 L. Street, N.W., Rm. 12006
Washington, D.C. 20530



John F. Cameron

I also hereby certify that I have mailed, by U.S. mail, certified mail, return receipt requested, postage prepaid, and properly addressed, an original and twelve (12) copies of the foregoing Addendum to Brief of Claimant-Appellant to the Clerk, U.S. Court of Appeals for the Federal Circuit at the following address, on this the 23rd day of April 2008:

Clerk
United States Court of Appeals for Federal Circuit
717 Madison Place, NW
Washington, DC 20439



John F. Cameron
Attorney for Claimant-Appellant